

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001 (Appropriations Committee) (At the request of the Legislative Council)

LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; 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, 2001, as follows:

Subdivision 1.

| FIFTY-SIXTH AND FIFTY-SEVENTH LEGISLATIVE ASSEMBLIES AND BIENNIUM | |
|---|-------------|
| Salaries and wages | \$4,828,739 |
| Operating expenses | 3,291,214 |
| Equipment | 42,150 |
| National conference of state legislatures | 158,113 |
| Total general fund appropriation | \$8,320,216 |

Subdivision 2.

LEGISLATIVE COUNCIL

| | |
|--|--------------|
| Salaries and wages | \$4,116,366 |
| Operating expenses | 2,043,811 |
| Equipment | 20,000 |
| Information technology program | 482,939 |
| Total general fund appropriation | \$6,663,116 |
| Grand total general fund appropriation | \$14,983,332 |

SECTION 2. TRANSFERS. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall make transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or the chairman's designee upon the finding by the chairman or designee that the nature of studies and duties assigned to the council requires the transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-sixth and fifty-seventh 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 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 2

HOUSE BILL NO. 1002 (Appropriations Committee) (At the request of the Supreme Court)

JUDICIAL BRANCH

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

SUPREME COURT

| | |
|----------------------------------|----------------|
| Salaries and wages | \$5,079,436 |
| Operating expenses | 1,535,514 |
| Equipment | 214,513 |
| Judges retirement | <u>276,860</u> |
| Total general fund appropriation | \$7,106,323 |

Subdivision 2.

DISTRICT COURTS

| | |
|----------------------------------|----------------|
| Salaries and wages | \$22,526,069 |
| Operating expenses | 8,937,038 |
| Equipment | 674,603 |
| Judges retirement | 814,561 |
| UND - Central legal research | 80,000 |
| Alternative dispute resolution | <u>40,000</u> |
| Total all funds | \$33,072,271 |
| Less estimated income | <u>779,943</u> |
| Total general fund appropriation | \$32,292,328 |

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

| | |
|--|------------------|
| Judicial conduct commission and disciplinary board | \$511,925 |
| Total all funds | <u>\$511,925</u> |
| Less estimated income | <u>270,000</u> |
| Total general fund appropriation | \$241,925 |

Subdivision 4.

CLERK OF DISTRICT COURT FUNDING

| | |
|--|--------------------|
| Clerk of district court funding | \$1,000,000 |
| Total general fund appropriation | <u>\$1,000,000</u> |
| Grand total general fund appropriation | \$40,640,576 |

| | |
|---|--------------|
| Grand total special funds appropriation | \$1,049,943 |
| Grand total all funds appropriation | \$41,690,519 |

SECTION 2. APPROPRIATION. There are hereby appropriated any funds received by the supreme court, district courts, and judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants, and donations for the purpose as designated in the federal acts or private gifts, grants, and donations for the period beginning July 1, 1999, and ending June 30, 2001.

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

SECTION 4. LEGISLATIVE COUNCIL STUDY OF UNIFIED COURT SYSTEM. The legislative council shall consider studying, during the 1999-2000 interim, the impacts of court unification on the judicial system and on the effective provision of judicial services to state residents.

SECTION 5. ALLOCATION FOR INDIGENT DEFENSE FUNDS. The supreme court shall develop criteria for the equitable allocation of indigent defense funds contained in the operating expenses line item for district courts. The criteria must be based on number of cases, complexity of cases, the level of efficiency in handling cases, and the historical funding levels in different districts. The supreme court may use any other factors deemed appropriate by the supreme court. The historical funding levels may be used as one factor of many and may not be given consideration in excess of any other factor. The supreme court shall use these criteria in the allocation of indigent defense funds appropriated under this Act.

SECTION 6. CLERK OF COURT UNIFICATION. Notwithstanding the provisions of 1999 House Bill No. 1275, the supreme court shall implement the clerk of court unification effective April 1, 2001.

SECTION 7. AMENDMENT. Section 27-02-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges of supreme court. The annual salary of each judge of the supreme court is ~~seventy-nine~~ eighty-three thousand ~~seven~~ eight hundred ~~seventy-one~~ seven dollars through June 30, ~~1998~~ 2000, and ~~eighty-two~~ eighty-five thousand ~~one~~ four hundred ~~sixty-four~~ eighty-three dollars thereafter. The chief justice of the supreme court is entitled to receive an additional two thousand ~~two~~ three hundred ~~fifty~~ sixty-five dollars per annum through June 30, ~~1998~~ 2000, and two thousand ~~three~~ four hundred ~~eighteen~~ twelve dollars per annum thereafter.

SECTION 8. AMENDMENT. Section 27-05-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. The annual salary of each district judge is ~~seventy-three~~ seventy-seven thousand ~~six~~ three hundred ~~sixteen~~ forty dollars through June 30, ~~1998~~ 2000, and ~~seventy-five~~ seventy-eight thousand eight hundred ~~twenty-four~~ eighty-seven dollars thereafter. Each district judge is entitled to travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional one thousand ~~seven~~ eight hundred ~~forty-three~~ thirty-one dollars per annum, through June 30, ~~1998~~ 2000, and one thousand ~~seven~~ eight hundred ~~ninety-five~~ sixty-eight dollars thereafter.

Approved April 19, 1999

Filed April 19, 1999

CHAPTER 3**HOUSE BILL NO. 1003**

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

BOARD OF HIGHER EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide for legislative council studies; to create and enact a new chapter to title 15 of the North Dakota Century Code, relating to the adoption of the midwestern regional higher education compact; 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 or other income, to the North Dakota university system and to the various institutions of higher learning under the supervision of the North Dakota university system for the purpose of defraying their expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM

| | |
|-------------------------------|------------------|
| Equity and special needs pool | \$4,290,128 |
| Technology pool | 21,948,467 |
| Critical salary pool | <u>2,630,992</u> |
| General fund appropriation | \$28,869,587 |

Subdivision 2.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

| | |
|---|------------------|
| Salaries and wages | \$2,194,131 |
| Operating expenses | 760,709 |
| Equipment | 26,000 |
| Student financial assistance grants | 4,450,281 |
| Information technology management | 215,255 |
| Professional student exchange program | 1,310,716 |
| Disabled student services | 26,560 |
| Technical administration | 197,627 |
| Contingency and capital improvements emergency fund | 398,000 |
| Scholars program | 706,230 |
| Native American scholarships | 204,082 |
| Title II | 534,000 |
| Competitive research program | 1,971,100 |
| Prairie public broadcasting | 992,513 |
| Board initiatives | <u>2,296,000</u> |
| Total operating funds | \$16,283,204 |
| Less estimated income | <u>4,933,900</u> |
| General fund appropriation | \$11,349,304 |

Subdivision 3.

BISMARCK STATE COLLEGE

| | |
|-------------------------------|--------------|
| Salaries and wages | \$16,406,677 |
| Operating expenses | 4,893,212 |
| Equipment | 367,187 |
| Capital improvements | 958,835 |
| Total operating funds | \$22,625,911 |
| Less estimated income | 7,789,776 |
| General fund appropriation | \$14,836,135 |
| Local funds appropriation | \$11,370,000 |
| Total all funds appropriation | \$33,995,911 |

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - LAKE REGION

| | |
|-------------------------------|--------------|
| Salaries and wages | \$4,374,197 |
| Operating expenses | 1,338,042 |
| Equipment | 150,338 |
| Capital improvements | 1,094,318 |
| Total operating funds | \$6,956,895 |
| Less estimated income | 1,948,806 |
| General fund appropriation | \$5,008,089 |
| Local funds appropriation | \$6,403,766 |
| Total all funds appropriation | \$13,360,661 |

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

| | |
|-------------------------------|-------------|
| Salaries and wages | \$5,280,022 |
| Operating expenses | 1,521,116 |
| Equipment | 249,596 |
| Capital improvements | 88,790 |
| Total operating funds | \$7,139,524 |
| Less estimated income | 2,300,265 |
| General fund appropriation | \$4,839,259 |
| Local funds appropriation | \$1,653,000 |
| Total all funds appropriation | \$8,792,524 |

Subdivision 6.

UNIVERSITY OF NORTH DAKOTA

| | |
|-------------------------------|---------------|
| Salaries and wages | \$98,902,879 |
| Operating expenses | 27,655,286 |
| Equipment | 1,520,260 |
| Capital improvements | 4,917,136 |
| Special initiatives pool | 1,462,223 |
| Total operating funds | \$134,457,784 |
| Less estimated income | 52,633,093 |
| General fund appropriation | \$81,824,691 |
| Local funds appropriation | \$282,733,609 |
| Total all funds appropriation | \$417,191,393 |

Subdivision 7.

NORTH DAKOTA STATE UNIVERSITY

| | |
|----------------------|--------------|
| Salaries and wages | \$85,829,387 |
| Operating expenses | 21,576,515 |
| Equipment | 1,867,800 |
| Capital improvements | 8,652,531 |

| | |
|-------------------------------|-------------------|
| Skills training center | <u>1,535,000</u> |
| Total operating funds | \$119,461,233 |
| Less estimated income | <u>55,903,914</u> |
| General fund appropriation | \$63,557,319 |
| Local funds appropriation | \$111,620,179 |
| Total all funds appropriation | \$231,081,412 |

Subdivision 8.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

| | |
|-------------------------------|------------------|
| Salaries and wages | \$23,706,342 |
| Operating expenses | 6,605,363 |
| Equipment | 1,494,368 |
| Capital improvements | <u>2,635,885</u> |
| Total operating funds | \$34,441,958 |
| Less estimated income | <u>9,485,836</u> |
| General fund appropriation | \$24,956,122 |
| Local funds appropriation | \$15,580,000 |
| Total all funds appropriation | \$50,021,958 |

Subdivision 9.

DICKINSON STATE UNIVERSITY

| | |
|-------------------------------|------------------|
| Salaries and wages | \$14,074,351 |
| Operating expenses | 4,074,962 |
| Equipment | 390,000 |
| Capital improvements | <u>693,962</u> |
| Total operating funds | \$19,233,275 |
| Less estimated income | <u>6,146,576</u> |
| General fund appropriation | \$13,086,699 |
| Local funds appropriation | \$8,221,397 |
| Total all funds appropriation | \$27,454,672 |

Subdivision 10.

MAYVILLE STATE UNIVERSITY

| | |
|-------------------------------|------------------|
| Salaries and wages | \$8,142,255 |
| Operating expenses | 2,211,150 |
| Equipment | 170,500 |
| Capital improvements | <u>931,671</u> |
| Total operating funds | \$11,455,576 |
| Less estimated income | <u>2,908,718</u> |
| General fund appropriation | \$8,546,858 |
| Local funds appropriation | \$7,400,000 |
| Total all funds appropriation | \$18,855,576 |

Subdivision 11.

MINOT STATE UNIVERSITY

| | |
|-------------------------------|-------------------|
| Salaries and wages | \$28,733,664 |
| Operating expenses | 6,043,525 |
| Equipment | 917,929 |
| Capital improvements | <u>1,050,466</u> |
| Total operating funds | \$36,745,584 |
| Less estimated income | <u>11,501,851</u> |
| General fund appropriation | \$25,243,733 |
| Local funds appropriation | \$19,003,936 |
| Total all funds appropriation | \$55,749,520 |

Subdivision 12.

VALLEY CITY STATE UNIVERSITY

| | |
|--------------------------------------|--------------|
| Salaries and wages | \$11,009,411 |
| Operating expenses | 2,842,167 |
| Equipment | 323,100 |
| Capital improvements | 812,334 |
| Center for innovation in instruction | 299,583 |
| Special initiatives | 68,714 |
| Total operating funds | \$15,355,309 |
| Less estimated income | 3,893,786 |
| General fund appropriation | \$11,461,523 |
| Local funds appropriation | \$8,820,000 |
| Total all funds appropriation | \$24,175,309 |

Subdivision 13.

MINOT STATE UNIVERSITY - BOTTINEAU

| | |
|-------------------------------|-------------|
| Salaries and wages | \$3,930,059 |
| Operating expenses | 1,063,035 |
| Equipment | 147,500 |
| Capital improvements | 218,130 |
| Total operating funds | \$5,358,724 |
| Less estimated income | 1,424,817 |
| General fund appropriation | \$3,933,907 |
| Local funds appropriation | \$2,124,426 |
| Total all funds appropriation | \$7,483,150 |

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

| | |
|-------------------------------|-------------|
| Salaries and wages | \$1,770,118 |
| Operating expenses | 423,601 |
| Equipment | 65,011 |
| Capital improvements | 79,541 |
| Grants to centennial trees | 147,486 |
| Total operating funds | \$2,485,757 |
| Less estimated income | 859,006 |
| General fund appropriation | \$1,626,751 |
| Local funds appropriation | \$1,336,082 |
| Total all funds appropriation | \$3,821,839 |

Subdivision 15.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

| | |
|--|-----------------|
| Salaries and wages | \$32,021,200 |
| Operating expenses | 7,502,327 |
| Equipment | 547,915 |
| Total operating funds | \$40,071,442 |
| Less estimated income | 10,812,782 |
| General fund appropriation | \$29,258,660 |
| Local funds appropriation | \$47,592,145 |
| Total all funds appropriation | \$87,663,587 |
| Grand total general fund appropriation H.B. 1003 | \$328,398,637 |
| Grand total estimated income appropriation H.B. 1003 | \$172,543,126 |
| Grand total local funds appropriation H.B. 1003 | \$523,858,540 |
| Grand total all funds appropriation H.B. 1003 | \$1,024,800,303 |

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency and capital improvements emergency fund, board initiatives, and disabled student services in subdivision 2 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 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 and capital improvements emergency fund, board initiatives, and disabled student services to the various entities and institutions and which line items in the various institutions and entities must be adjusted.

SECTION 3. ADDITIONAL INCOME - APPROPRIATION. 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 up to the following amounts is hereby appropriated and may be spent subject to state board of higher education approval:

| INSTITUTION | AMOUNT |
|---|------------------|
| North Dakota university system office | \$425,990 |
| Bismarck state college | 706,289 |
| University of North Dakota - Lake Region | 143,970 |
| University of North Dakota - Williston | 224,310 |
| University of North Dakota | 5,019,907 |
| North Dakota state university | 4,732,776 |
| North Dakota state college of science | 846,333 |
| Dickinson state university | 602,255 |
| Mayville state university | 267,347 |
| Minot state university | 1,157,210 |
| Valley City state university | 355,978 |
| Minot state university - Bottineau | 131,711 |
| North Dakota forest service | 85,900 |
| University of North Dakota medical center | <u>5,947,201</u> |
| Total | \$20,647,177 |

Any additional excess estimated income is hereby appropriated and may 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, 1999, and ending June 30, 2001.

SECTION 4. TRANSFER AUTHORITY. The state board of higher education is authorized to approve the transfer of funds between line items for each entity included in section 1 of this Act and shall notify the office of management and budget of each transfer.

SECTION 5. EXEMPTION. The scholars program, university system contingency fund, student financial assistance grants, professional student exchange program, native American scholarships, and operating expenses contained in subdivision 2 of section 1 of chapter 32 of the 1997 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations are available during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. The state board of higher education is authorized to adjust or increase full-time equivalent positions as needed, subject to the availability of funds. The university

system shall report any adjustments to the office of management and budget prior to the submission of the 2001-03 budget request.

SECTION 7. UNEXPENDED GENERAL FUND APPROPRIATIONS - EXCESS INCOME. Unexpended general fund dollars appropriated to and excess income received by entities listed in section 1 of chapter 32 of the 1997 Session Laws are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations or revenues are available during the biennium beginning July 1, 1999, and ending June 30, 2001, and may be expended, as directed by the state board of higher education, for capital repairs and improvements, equipment, and other one-time expenditures.

SECTION 8. PROJECT AUTHORIZATIONS - LOCAL RESPONSIBILITY. The capital improvements at Bismarck state college and UND-Lake Region require a minimum local match as follows:

| | |
|---|-----------|
| Bismarck state college - music addition | \$200,000 |
| UND-Lake Region - auditorium renovation | \$495,000 |

Bismarck state college may, after receiving approval from the budget section, obtain and utilize any available funds, in addition to the minimum local match of \$200,000, received from federal, public, private, or other sources which are hereby appropriated to Bismarck state college to assist in the music addition and related renovations at Bismarck state college.

UND-Lake Region may, after receiving approval from the budget section, obtain and utilize any available funds, in addition to the minimum local match of \$495,000, received from federal, public, private, or other sources which are hereby appropriated to UND-Lake Region to assist in the auditorium renovation at UND-Lake Region.

SECTION 9. 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 \$4,750,000 for the purpose of financing capital projects at institutions under the control of the board, including an amount not exceeding \$250,000 for student union improvements at Bismarck state college and \$4,500,000 for a health and wellness center at North Dakota state university. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 10. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 9, or so much of the sum as may be necessary, in the amount of \$250,000 for the student union improvements at Bismarck state college and \$4,500,000 for a health and wellness center at North Dakota state university and other available funds from other sources are hereby appropriated for these projects. Any unexpended balance from the sale of bonds must be placed in a sinking fund for the retirement of the authorized bonds.

SECTION 11. LOCAL FUNDS APPROPRIATED. Any local funds beyond the local funds appropriated in Section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001, and may be spent subject to approval of the state board of higher education and reported to the budget section of the legislative council.

SECTION 12. SERVICE, ACCESS, GROWTH, AND EMPOWERMENT. Prior to purchasing goods or contracting for services for the service, access, growth,

and empowerment project, the state board of higher education must receive permission from either the legislative assembly or the budget section of the legislative council. Information provided must include a business plan project.

SECTION 13. NDSU/NDSCS SKILLS TRAINING CENTER. The general fund moneys provided by the 1999 legislative assembly for the skills training center may only be used for renovations to the skills training center. Any general fund moneys provided for the skills training center for the 1999-2001 biennium are intended to be the final direct general fund support provided by the legislative assembly, and no direct general fund support may be provided for the operations of or renovations or additions to the skills training center after the 1999-2001 biennium.

SECTION 14. PROGRAM COORDINATION AND ACCREDITATION. The legislative assembly urges the state board of higher education to carefully review requests by state institutions of higher education applying for accreditation of programs that have already been accredited at other state institutions. The board should consider student access and quality issues as well as costs when reviewing such requests. Whenever such a request is made or accreditation is granted, the board is encouraged to direct the campuses offering similar programs to cooperate in jointly offering the similar programs by using the staffs and resources of the other campuses. Also, the legislative assembly expresses its strong support for the board to continue implementing policies and procedures to ensure coordination and cooperation between campuses where similar programs are offered.

SECTION 15. TECHNOLOGY POOL. The technology pool amount in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the board of higher education. Technology funding allocations are to be made based on historic funding, the higher education computer network strategic plan, base funding for higher education computer network computer center operations, and base funding for interactive video network and on-line Dakota information network operations.

SECTION 16. CRITICAL SALARY POOL. The critical salary pool amount in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 2 through 15 of section 1 as determined by the board of higher education. When making allocations from the critical salary pool in subdivision 1 of section 1, the state board of higher education shall allocate funds to address additional salary increases beyond legislative appropriations, for market and equity issues.

SECTION 17. EQUITY AND SPECIAL NEEDS POOL. The equity and special needs pool in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 3 through 13 of section 1 as determined by the board of higher education. When making allocations from the equity and special needs pool in subdivision 1 of section 1, the board of higher education shall allocate the funds to address equity funding issues and special academic program needs of the entities under its control.

SECTION 18. MINOT STATE UNIVERSITY - BOTTINEAU INFORMATION TECHNOLOGY INITIATIVE. The board of higher education is strongly encouraged to consider allocating \$200,000 from either the equity and special needs pool or the board initiatives funding to Minot state university - Bottineau for Minot state university - Bottineau's information technology initiative.

SECTION 19. LEGISLATIVE COUNCIL INTERIM STUDY OF HIGHER EDUCATION FUNDING. The legislative council shall consider studying higher

education funding during the 1999-2000 interim. If conducted, the study should solicit input from the governor, board of higher education, executive branch, university system campuses, and representatives of business and industry. The study should address the expectations of the North Dakota university system in meeting the state's needs in the twenty-first century, the funding methodology needed to meet these expectations and needs, and an accountability system and reporting methodology for the university system. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 20. LEGISLATIVE COUNCIL STUDY - TRIBAL COLLEGES. The legislative council shall consider studying the tribally controlled colleges in this state and the United Tribes technical college, including a review of funding sources and the number of Indian and non-Indian students attending each college, for the purpose of determining the desirability and feasibility of a grant program to assist the colleges in providing education to students who are less than one-quarter Indian. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 21. UTILITY SAVINGS. Any utility savings realized during the 1999-2001 biennium by the entities listed in section 1 of this Act must be used for maintenance or capital project expenditures.

SECTION 22. LAND BOARD DISTRIBUTIONS. Notwithstanding the provisions of section 15-03-05.2, during the 1999-2001 biennium, the board of university and school lands shall distribute to the appropriate entities in section 1 of this Act all income from permanent funds managed for the benefit of those institutions.

SECTION 23. PARTICIPATION IN MIDWESTERN REGIONAL HIGHER EDUCATION COMPACT STUDENT EXCHANGE PROGRAM. Notwithstanding section 24 of this Act, it is the intent of the fifty-sixth legislative assembly that during the 1999-2001 biennium North Dakota's membership in the midwestern regional higher education compact may not include participation in the compact's student exchange program. The legislative council shall consider including a review of North Dakota's participation in the student exchange program portion of the midwestern regional higher education compact in the study provided for in section 19 of this Act.

SECTION 24. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

Midwestern regional higher education compact. The midwestern regional higher education compact is adopted as follows:

Article I. Purpose

The purpose of the midwestern higher education compact is to provide greater higher education opportunities and services in the midwestern region, with the aim of furthering regional access to, research in, and choice of higher education for the citizens residing in the states that are parties to this compact.

Article II. The Commission

1. The compacting states create the midwestern higher education commission, hereinafter called the commission. The commission is a body corporate of each compacting state. The commission has all the responsibilities, powers, and duties set forth in this chapter, including the power to sue and be sued, and any additional powers conferred upon it by subsequent action of the respective legislative assemblies of the compacting states in accordance with the terms of this compact.
2. The commission consists of the following five resident members from each state: the governor or the governor's designee who serves during the tenure of office of the governor; two legislators, one from each house, except for Nebraska, which may appoint two legislators from its legislative assembly, who serve two-year terms and are appointed by the appropriate appointing authority in each house of the legislative assembly; and two other at large members, at least one of whom is to be selected from the field of higher education. The at large members are to be appointed as provided by the laws of the appointing state. One of the two at large members initially appointed in each state serves a two-year term. The other, and any regularly appointed successor to either at large member, serves a four-year term. All vacancies are to be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy serves until the end of the incomplete term.
3. The commission shall select annually, from among its members, a chairman, a vice chairman, and a treasurer.
4. The commission shall appoint an executive director who serves at its pleasure and who is secretary to the commission. The treasurer, the executive director, and other personnel as the commission determines must be bonded in the amounts required by the commission.
5. The commission shall meet at least once each calendar year. The chairman may call additional meetings and upon the request of a majority of the commission members of three or more compacting states, shall call additional meetings. The commission shall give public notice of all meetings. All meetings must be open to the public.
6. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission.

Article III. Powers and Duties of the Commission

1. The commission shall adopt bylaws governing its management and operations.
2. Notwithstanding the laws of any compacting state, the commission shall provide for the personnel policies and programs of the compact in its bylaws.
3. The commission shall submit a budget to the governor and legislative assembly of each compacting state at the time and for the period

required by each state. The budget must contain recommendations regarding the amount to be appropriated by each compacting state.

4. The commission shall report annually to the legislative assemblies and governors of the compacting states, to the midwestern governors' conference, and to the midwestern legislative conference of the council of state governments regarding the activities of the commission during the preceding year. The reports must include any recommendations that have been adopted by the commission.
5. The commission may borrow, accept, or contract for the services of personnel from any state or from the United States, or from any subdivision or agency thereof, from any interstate agency, or from any person.
6. The commission may accept for any of its purposes and functions under the compact donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state or the United States or from any subdivision or agency thereof, from an interstate agency, or from any person, and may receive, use, and dispose of the same.
7. The commission may enter agreements with any other interstate education organization or agency, with institutions of higher education located in nonmember states, and with any of the various states to provide adequate programs and services in higher education for the citizens of the respective compacting states. After negotiations with interested institutions and interstate organizations or agencies, the commission shall determine the cost of providing the programs and services in higher education for use in these agreements.
8. The commission may establish and maintain offices in one or more of the compacting states.
9. The commission may establish committees and hire staff as necessary to carry out its functions.
10. The commission may provide for actual and necessary expenses for the attendance of its members at official meetings of the commission or of its designated committees.

Article IV. Activities of the Commission

1. The commission shall collect data on the long-range effects of the compact on higher education. By the end of the fourth year from the effective date of the compact and every two years thereafter, the commission shall review its accomplishments and make recommendations to the governors and legislative assemblies of the compacting states regarding continuance of the compact.
2. The commission shall study higher education issues that are of particular concern to the midwestern region. The commission also shall study the need for higher education programs and services in the compacting states and the resources for meeting those needs. The commission shall prepare reports, on its research, for presentation to the governors and legislative assemblies of the compacting states, as

well as to other interested parties. In conducting the studies, the commission may confer with any national or regional planning body. The commission may draft and recommend to the governors and legislative assemblies of the various compacting states suggested legislation addressing issues in higher education.

3. The commission shall study the need for the provision of adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for exchange in a field is apparent, the commission may enter agreements with any institution of higher education and with any compacting state to provide programs and services in higher education for the citizens of the respective compacting states. After negotiating with interested institutions and the compacting states, the commission shall determine the cost of providing the programs and services in higher education for use in its agreements. The contracting states shall contribute funds not otherwise provided, as determined by the commission, to carry out the agreements. The commission may also serve as the administrative and fiscal agent in carrying out agreements for higher education programs and services.
4. The commission shall serve as a clearinghouse for information regarding higher education activities among institutions and agencies.
5. The commission may provide services and research in any other area of regional concern.

Article V. Finance

1. The compacting states will appropriate the amount necessary to finance the general operations of the commission, not otherwise provided for, when authorized by their respective legislative assemblies. The amount must be apportioned equally among the compacting states.
2. The commission may not incur any obligations prior to the passage of appropriations adequate to meet the same; nor may the commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
3. The commission shall keep accurate accounts of its receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.
4. The accounts of the commission must be open at any reasonable time for inspection by duly authorized representatives of the compacting states and by persons authorized by the commission.

Article VI. Eligible Parties and Entry Into Force

1. The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin

are eligible to become parties to this compact. Additional states may be eligible if approved by a majority of the compacting states.

2. This compact becomes effective, as to any eligible party state, when its legislative assembly enacts the compact into law.
3. An amendment to the compact becomes effective upon its enactment by the legislative assemblies of all compacting states.

Article VII. Withdrawal, Default, and Termination

1. A compacting state may withdraw from the compact by enacting a statute repealing the compact, but the withdrawal may not become effective until two years after the enactment of such statute. A withdrawing state is liable for any obligation that it incurred on account of its party status, up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it remains liable to the extent of the obligation.
2. If a compacting state at any time defaults in the performance of its obligations, assumed or imposed, in accordance with this compact, all rights, privileges, and benefits conferred by this compact or by agreements made under the compact are suspended from the effective date of the default, as fixed by the commission. The commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless the default is remedied under the stipulations and within the time period set by the commission, the compact may be terminated with respect to the defaulting state by affirmative vote of a majority of the other member states. A defaulting state may be reinstated by performing all acts and obligations required by the commission.

Article VIII. Severability and Construction

The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or its applicability to any person or circumstance is held invalid, the validity of the remainder of the compact and its applicability to any person or circumstance may not be affected. If the compact is found to be contrary to the constitution of any compacting state, the compact remains in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of the compact must be liberally construed to effectuate the purpose of the compact.

Midwestern higher education commission - Terms - Vacancies.

1. The members of the midwestern higher education commission representing this state are:
 - a. The governor or the governor's designee.
 - b. One member of the senate and one member of the house of representatives, appointed by the chairman of the legislative council.

- c. Two at large members, one of whom must be knowledgeable about the field of higher education, appointed by the governor.
2. The term of each legislative appointee is two years. One initial at large member must be appointed for a term of two years and the other for a term of four years. Thereafter, the term of each at large member is four years.
3. If a member vacates the position to which the member was appointed, the position must be filled for the remainder of the unexpired term in the same manner as that position was filled initially.

SECTION 25. EMERGENCY. The capital improvements line items contained in subdivisions 2 through 14 of section 1 of this Act and the skills training center line item contained in subdivision 7 of section 1 of this Act are declared to be emergency measures, and those funds are available immediately upon filing of this Act with the secretary of state. Sections 9 and 10 of this Act are declared to be emergency measures.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 4

HOUSE BILL NO. 1004

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

HEALTH DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the state department of health; to provide for legislative intent; 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 for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|---------------------|
| Salaries and wages | \$26,162,622 |
| Operating expenses | 15,315,557 |
| Equipment | 1,321,678 |
| Capital improvements | 40,446 |
| Grants | 23,984,130 |
| WIC food payments | 18,226,930 |
| Total all funds | <u>\$85,051,363</u> |
| Less estimated income | <u>70,595,319</u> |
| Total general fund appropriation | \$14,456,044 |

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of health from the abandoned motor vehicle disposal fund under section 39-26-11 for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. 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 from the environment and rangeland protection fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. DOMESTIC VIOLENCE FUND. The estimated income line item included in section 1 of this Act includes \$300,000, or so much of the sum as may be necessary, to be made available to the state department of health from the domestic violence fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 5. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND. The estimated income line item included in section 1 of this Act includes \$2,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environmental health practitioner licensure fee administrative fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. WASTEWATER OPERATORS CERTIFICATION FUND. The estimated income line item included in section 1 of this Act includes \$12,017, or so much of the sum as may be necessary, to be made available to the state department of health from the wastewater operators certification fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 7. DEPARTMENT OF HEALTH - INDIRECT COST RECOVERIES. Notwithstanding section 54-44.1-15, the state department of health may deposit indirect cost recoveries in its operating account.

SECTION 8. LEGISLATIVE COUNCIL STUDY LABORATORY SPACE AND STATE MORGUE. The state department of health shall develop a master plan for its facilities; shall develop a definitive plan and firm cost estimates for upgrading the department's laboratory facilities, for providing a state morgue for the state medical examiner, and for bringing the department's facilities into compliance with applicable building code requirements; and shall submit the plans to the legislative council during the 1999-2000 interim. The legislative council shall study the plans submitted by the state department of health and shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 9. LEGISLATIVE COUNCIL STUDY COMMUNITY HEALTH GRANT PROGRAM. The state department of health shall develop a comprehensive plan for a community health grant program and shall submit the plan to the legislative council during the 1999-2000 interim. The legislative council shall study the plan submitted by the state department of health and shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 10. LEGISLATIVE INTENT - STATE AID TO LOCAL HEALTH DISTRICTS. It is the intent of the legislative assembly that the state department of health provide aid to local health districts grants during the biennium beginning July 1, 1999, and ending June 30, 2001, totaling \$1,100,000 and that the additional \$100,000 necessary to fund that level be found by the department within its appropriation.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 5

HOUSE BILL NO. 1005

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

INDIAN AFFAIRS COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the Indian affairs commission; to provide for line item transfers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|---------------|
| Salaries and wages | \$273,507 |
| Operating expenses | 53,275 |
| Equipment | <u>2,300</u> |
| Total all funds | \$329,082 |
| Less estimated income | <u>16,300</u> |
| Total general fund appropriation | \$312,782 |

SECTION 2. LEGISLATIVE INTENT - DIRECTORY FEES. It is the intent of the fifty-sixth legislative assembly that the Indian affairs commission establish a fee to recover all or a portion of its costs related to printing and distributing its directory.

SECTION 3. LEGISLATIVE INTENT - INDIAN AFFAIRS COMMISSION FUND. It is the intent of the fifty-sixth legislative assembly that the office of management and budget change the name of fund 318 from the Indian affairs alcohol and drug abuse fund to the Indian affairs commission fund and that the fund then be used to account for special fund revenues and expenditures associated with the general operation of the commission.

SECTION 4. LINE ITEM TRANSFERS - 1997-99 BIENNIUM. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer, at the request of the director of the Indian affairs commission, shall transfer \$4,500 from the salaries and wages line item contained in section 1 of chapter 34 of the 1997 Session Laws to the operating expenses line item contained in section 1 of chapter 34 of the 1997 Session Laws. The authority to make this transfer begins with the effective date of this Act and ends on June 30, 1999.

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

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 6**HOUSE BILL NO. 1006**

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

AERONAUTICS COMMISSION

AN ACT to provide 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 the expenses of the aeronautics commission, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|-------------------|
| Salaries and wages | \$592,419 |
| Operating expenses | 1,091,740 |
| Equipment | 61,500 |
| Capital improvements | 110,000 |
| Grants | <u>12,755,000</u> |
| Total all funds | \$14,610,659 |
| Less estimated income | <u>14,060,659</u> |
| Total general fund appropriation | \$550,000 |

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 7**HOUSE BILL NO. 1007**

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

**VETERANS' HOME AND DEPARTMENT OF
VETERANS' AFFAIRS**

AN ACT to provide an appropriation for defraying the expenses of the veterans' home and department of veterans' affairs; to provide for line item transfers for the 1997-99 biennium; to provide for land board distributions; 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 veterans' home and the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

VETERANS' HOME

| | |
|----------------------------------|------------------|
| Salaries and wages | \$5,841,293 |
| Operating expenses | 1,978,278 |
| Equipment | 45,050 |
| Capital improvements | <u>482,220</u> |
| Total all funds | \$8,346,841 |
| Less estimated income | <u>6,108,004</u> |
| Total general fund appropriation | \$2,238,837 |

Subdivision 2.

VETERANS' AFFAIRS

| | |
|---|---------------|
| Total all funds | \$462,667 |
| Less estimated income | <u>18,333</u> |
| Total general fund appropriation | \$444,334 |
| Grand total general fund appropriation H.B. 1007 | \$2,683,171 |
| Grand total special funds appropriation H.B. 1007 | \$6,126,337 |
| Grand total all funds appropriation H.B. 1007 | \$8,809,508 |

SECTION 2. LINE ITEM TRANSFERS - 1997-99 BIENNIUM.

Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer, at the request of the director of the department of veterans affairs, shall transfer \$1,772 from the salaries and wages line item contained in subdivision 2 of section 1 of chapter 36 of the 1997 Session Laws to the operating expenses line item contained in subdivision 2 of section 1 of chapter 36 of the 1997 Session Laws. The authority to make this transfer begins with the effective date of this Act and ends on June 30, 1999.

SECTION 3. APPROPRIATION. There is hereby appropriated \$3,300 of special funds from donations to the department of veterans affairs for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 4. LAND BOARD DISTRIBUTIONS. Notwithstanding the provisions of section 15-03-05.2, during the 1999-2001 biennium, the board of university and school lands shall distribute to the veterans home all income from a permanent fund managed for this institution.

SECTION 5. EMERGENCY. Sections 2 and 3 of this Act are declared to be an emergency measure.

Approved April 14, 1999

Filed April 14, 1999

CHAPTER 8**HOUSE BILL NO. 1008**

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

BANKING AND FINANCIAL INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 the expenses of the department of banking and financial institutions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|---|---------------|
| Salaries and wages | \$2,320,326 |
| Operating expenses | 529,272 |
| Equipment | 86,784 |
| Contingency - banking and financial institutions | <u>20,000</u> |
| Total appropriation from the financial institutions regulatory fund | \$2,956,382 |

SECTION 2. EMERGENCY. Of the amount appropriated for equipment in section 1 of this Act, \$30,000 is declared to be an emergency measure.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 9**HOUSE BILL NO. 1009**

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

STATE FAIR ASSOCIATION

AN ACT to provide an appropriation for defraying 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 other income to the state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|----------------|
| Capital improvements | \$210,000 |
| Premiums | <u>360,000</u> |
| Total all funds | \$570,000 |
| Less estimated income | <u>20,000</u> |
| Total general fund appropriation | \$550,000 |

SECTION 2. MATCHING FUNDS REQUIRED. The state fair association shall provide matching funds for premiums from a source other than the state general fund in an amount equal to any general fund moneys spent in excess of \$320,000 from the premiums line item in section 1 of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved March 16, 1999
 Filed March 16, 1999

CHAPTER 10**HOUSE BILL NO. 1010**

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

COUNCIL ON THE ARTS

AN ACT to provide an appropriation for defraying the expenses of the council on the arts and 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 the expenses of the council on the arts, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|------------------|
| Salaries and wages | \$373,579 |
| Operating expenses | 189,267 |
| Equipment | 14,000 |
| Grants | <u>1,185,200</u> |
| Total all funds | \$1,762,046 |
| Less estimated income | <u>981,800</u> |
| Total general fund appropriation | \$780,246 |

SECTION 2. APPROPRIATION. All income from the cultural endowment fund is hereby appropriated to the council on the arts for the furthering of the cultural arts in the state for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. ADDITIONAL INCOME - EMERGENCY COMMISSION APPROVAL. 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, 1999, and ending June 30, 2001, and may be spent only upon authorization of the emergency commission.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 11

HOUSE BILL NO. 1011

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

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 in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway patrol for the purpose of defraying its expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|-------------------|
| Administration | \$1,996,541 |
| Field operations | 22,083,004 |
| Law enforcement training academy | <u>922,445</u> |
| Total all funds appropriation | \$25,001,990 |
| Less estimated income | <u>15,695,754</u> |
| Total general fund appropriation | \$9,306,236 |

SECTION 2. SPECIAL FUNDS TRANSFER. The less estimated income line item in section 1 of this Act includes the sum of \$13,285,610, or so much of the sum as may be necessary, from the state highway fund that may be transferred at the direction of the superintendent of the highway patrol for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 1 of this Act an amount not to exceed \$170 per month for the biennium beginning July 1, 1999, and ending June 30, 2001. The payments are in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. The amounts must be paid without the presentation of receipts or other memorandums at the time and in the same manner as salaries of members of the highway patrol are paid.

SECTION 4. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the highway patrol may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 12

HOUSE BILL NO. 1012

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

DEPARTMENT OF TRANSPORTATION

AN ACT to provide an appropriation for defraying the expenses of the various divisions under the supervision of the director of the department of transportation; to provide an appropriation to the department of corrections and rehabilitation; to provide for a legislative council study; to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to commemorative Lewis and Clark number plates; and to amend and reenact sections 39-04-08.1, 39-04-11, and subsection 4 of section 39-04-19 of the North Dakota Century Code, relating to the display of and fees for number plates and tabs.

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, 1999, and ending June 30, 2001, as follows:

| | |
|---------------------|-------------------|
| Administration | \$25,857,360 |
| Motor vehicle | 7,613,072 |
| Driver's license | 9,438,859 |
| Highways | 548,726,965 |
| Fleet services | <u>33,751,351</u> |
| Total special funds | \$625,387,607 |

SECTION 2. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the director of the department of transportation may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 3. APPROPRIATION - ROUGHRIDER INDUSTRIES. There is hereby appropriated from special funds, derived from income, the sum of \$75,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of defraying the expenses associated with the production of a Lewis and Clark commemorative license plate for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. LEGISLATIVE COUNCIL STUDY - FLEET SERVICES. The legislative council shall consider studying, during the 1999-2000 interim, the fleet services program of the department of transportation. The study should include a review, the cost-effectiveness of the program, and the methods used to project and set motor pool rates.

SECTION 5. LEGISLATIVE COUNCIL STUDY OF USED MOTOR VEHICLE DEALERS. During the 1999-2000 interim, the legislative council shall consider studying the licensing of used motor vehicle dealers, including fees, dealer plates, and insurance coverage. If the study is conducted, the legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 6. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

Commemorative Lewis and Clark number plates. The director shall design and issue a distinctive number plate commemorating Lewis and Clark. The director shall issue this plate upon application and payment of an additional fee of ten dollars. All additional fees collected under this section must be deposited in the highway fund.

SECTION 7. AMENDMENT. Section 39-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

39-04-08.1. Assignment of motor vehicle number plates. Motor vehicle number plates may not be assigned as a reward for any political activity, in recognition of any political affiliation or membership in any political party, or on the basis of political favoritism. However, an elected state office may be assigned a single or double digit number on a number plate as requested by that official. Except as provided in sections 39-04-10 and 39-04-10.3, the department shall charge a nonrefundable fee of ten dollars if an applicant chooses a number plate other than the number plate randomly assigned. The department of transportation shall may adopt rules governing the assignment of numbers on motor vehicle number plates in accordance with this section.

SECTION 8. AMENDMENT. Section 39-04-11 of the North Dakota Century Code is amended and reenacted as follows:

39-04-11. Display of number plates and tabs. Except as otherwise specifically provided, ~~no~~ a person may not operate or drive a vehicle on the public highways of this state unless the vehicle has a distinctive number assigned to it by the department, and two number plates, bearing the distinctive number conspicuously displayed, horizontally and in an upright position, one on the front and one on the rear of the vehicle, each securely fastened, except number plates assigned to a motorcycle, trailer, or housetrailer must be attached to the rear thereof. When only one number plate is furnished for an apportioned vehicle licensed under the international registration plan as authorized in section 39-19-04, truck tractor, or semitrailer, the plate must be attached to the front of the apportioned vehicle or truck tractor and the rear of the semitrailer. The bottom of each number plate must be at a height of not less than twelve inches [30.48 centimeters] above the level surface upon which the vehicle stands. Each plate must be mounted in a manner that does not cover any words, letter, or number on the plate. As far as is reasonably possible, the plates must at all times be kept free and clear of mud, ice, or snow so as to be clearly visible and all number plates, markers, or evidence of registration or licensing except for the current year must be removed from the vehicle. All vehicle license plates issued by the department continue to be the property of the state of North Dakota for the period for which the plates are valid. An annual registration tab or sticker for the current registration year must be displayed on each number plate, in the area designated by the department for the tab or sticker, in those years for which tabs or stickers are issued in lieu of number plates.

¹ **SECTION 9. AMENDMENT.** Subsection 4 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars. Upon the request of a person with a trailer or farm trailer to whom a registration or identification plate is provided under this subsection, the department shall provide a plate of the same size as provided for a motorcycle. The department shall provide notification of this option to the person before the replacement or issuance of the plate.

Approved April 22, 1999

Filed April 22, 1999

¹ Section 39-04-19 was also amended by section 1 of House Bill No. 1312, chapter 335, and section 1 of House Bill No. 1183, chapter 336.

CHAPTER 13

HOUSE BILL NO. 1013

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

COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT to provide an appropriation for defraying the expenses of the commissioner of university and school lands; to declare legislative intent regarding priorities of the state abandoned property office administrator; and to amend and reenact subsection 2 of section 47-30.1-30 and section 47-30.1-32 of the North Dakota Century Code, relating to unclaimed property records and appeals.

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 the commissioner of university and school lands, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|--------------------|
| Assets management | \$2,415,900 |
| Energy development impact office | <u>5,000,000</u> |
| Total special funds | <u>\$7,415,900</u> |

SECTION 2. OIL AND GAS IMPACT GRANT FUND. The amount of \$5,000,000, or so much of the amount as may be necessary, included in the total special funds appropriated 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 the administration of the oil and gas development impact grant program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act.

SECTION 4. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the commissioner of university and school lands may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 5. LEGISLATIVE INTENT - UNCLAIMED PROPERTY EXAMINATIONS - REPORT TO THE FIFTY-SEVENTH LEGISLATIVE ASSEMBLY. It is the intent of the fifty-sixth legislative assembly that the administrator of the state abandoned property office give priority to unclaimed property holder education programs and, when conducting examinations under North Dakota Century Code

chapter 47-30.1, the administrator give priority to examinations of financial institutions and hospitals. The administrator shall report to the fifty-seventh legislative assembly on abandoned property examinations conducted during the 1999-2001 biennium.

SECTION 6. AMENDMENT. Subsection 2 of section 47-30.1-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The administrator, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this chapter. The administrator may not require a person to provide records for a period exceeding the current year and seven preceding fiscal years. The administrator may conduct the examination even if the person believes ~~it~~ that person is not in possession of any property reportable or deliverable under this chapter. The administrator may not contract for an examination done within this state.

SECTION 7. AMENDMENT. Section 47-30.1-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-30.1-32. Enforcement - Appeals. The administrator may bring an action in a court of competent jurisdiction to enforce this chapter. A person in this state who is aggrieved by an audit that in any form requests the payment of money or a civil penalty is entitled to a hearing before the board of university and school lands. A demand for a hearing must be made within thirty days of the request by the administrator. The request by the administrator must contain notice of the right to a hearing. The board's decision is the final order of the agency and is appealable to the district court. Any amount of money requested by the administrator which may increase over time is tolled at the time of filing an appeal, retroactive to the date of the request.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 14

HOUSE BILL NO. 1014

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

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to provide an appropriation for defraying the expenses of the children's services coordinating committee; to provide for a legislative council study; to provide a statement of legislative intent; and to create and enact a new section to chapter 54-56 of the North Dakota Century Code, relating to the children's services coordinating committee operating 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 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, 1999, and ending June 30, 2001, as follows:

| | |
|--------------------|------------------|
| Salaries and wages | \$70,161 |
| Operating expenses | 57,339 |
| Grants | <u>6,622,500</u> |
| Total all funds | \$6,750,000 |

SECTION 2. GRANTS - BUDGET SECTION APPROVAL. Of the \$6,622,500 appropriated in the grants line item in section 1 of this Act, the children's services coordinating committee shall provide grants of \$200,000 to the native American alcohol and drug abuse education program during the biennium beginning July 1, 1999, and ending June 30, 2001. Any other statewide grants distributed by the committee, unless specifically approved by the legislative assembly, are subject to budget section approval.

SECTION 3. ADDITIONAL INCOME - EMERGENCY COMMISSION APPROVAL. 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, 1999, and ending June 30, 2001, and may be spent only upon authorization of the emergency commission.

SECTION 4. LEGISLATIVE INTENT - FUNCTION OF REGIONAL AND TRIBAL CHILDREN'S SERVICES COORDINATING COMMITTEES. It is the intent of the legislative assembly that each regional and tribal children's services coordinating committee function as a regional planning committee to monitor and coordinate children's services in each region and that the regional and tribal children's services coordinating committees not directly provide services or programs.

SECTION 5. FEDERAL FUND ALLOCATIONS - EMERGENCY COMMISSION APPROVAL. Of the \$7,500,000 of federal funds estimated to be generated as a result of participating entities claiming federal administrative cost

reimbursements through the department of human services, the following allocations are made for the biennium beginning July 1, 1999, and ending June 30, 2001:

| AGENCY/ORGANIZATION | ALLOCATION |
|--|--|
| Department of human services | 10 percent |
| Children's services coordinating committee - Administration | 1.7 percent |
| Children's services coordinating committee - Grants to regional and tribal children's services coordinating committees for administrative costs | 18 percent |
| Children's services coordinating committee - Grants to regional and tribal children's services coordinating committees for collaboration efforts | 2 percent |
| Regional and tribal children's services coordinating committees - Grants, including those to participating entities | 62.3 percent, includes 20 percent that is returned to participating entities |
| Children's services coordinating committee - Statewide grants | 6 percent |

If less than \$7,500,000 is generated as a result of participating entities claiming federal administrative cost reimbursements for the 1999-2001 biennium, the children's services coordinating committee shall proportionately reduce the percentage allocations for statewide grants and regional and tribal children's services coordinating committee grants to generate the funds necessary to provide \$127,500 for children's services coordinating committee administration for the 1999-2001 biennium, \$1,350,000 for grants to regional and tribal committees for administrative costs for the 1999-2001 biennium, and \$150,000 for grants to regional and tribal children's services coordinating committees for collaboration efforts for the 1999-2001 biennium under this section. Any federal funds received by the state as a result of participating entities claiming federal administrative cost reimbursements through the department of human services in excess of \$7,500,000 for the biennium beginning July 1, 1999, and ending June 30, 2001, must be distributed, subject to emergency commission approval as follows:

| AGENCY/ORGANIZATION | ALLOCATION |
|---|---|
| Regional and tribal children's services coordinating committees - Grants, including those to participating entities | 100 percent, includes 20 percent that is returned to participating entities |

SECTION 6. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 1999-2000 interim, the uses of funds appropriated to the children's services coordinating committee including:

1. A review of the uses of the funding received by the regional and tribal children's services coordinating committees and the appropriate level of administrative costs for these committees.
2. A review of the entities involved in generating "refinancing" funds and how the "refinancing" funding returned to them is being used.

SECTION 7. A new section to chapter 54-56 of the North Dakota Century Code is created and enacted as follows:

Operating fund balance. The children's services coordinating committee may not maintain an unobligated operating fund balance, excluding income received during the final thirty days of each fiscal year, which exceeds fifty thousand dollars or twenty percent of annual income allocated for its administrative costs and statewide grants, whichever is less, at the end of each fiscal year.

Approved April 14, 1999

Filed April 14, 1999

CHAPTER 15

HOUSE BILL NO. 1015

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

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 state industrial commission; to provide a continuing appropriation; to authorize transfers; to provide for a report to the budget section; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

| | |
|----------------------------------|-------------------|
| Salaries and wages | \$5,838,079 |
| Operating expenses | 1,754,234 |
| Equipment | 149,520 |
| Grants | 10,450,000 |
| Administrative contingency | 10,000 |
| Bond payments | 15,891,168 |
| Geophysical exploration | <u>245,102</u> |
| Total all funds | \$34,338,103 |
| Less estimated income | <u>13,767,635</u> |
| Total general fund appropriation | \$20,570,468 |

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

| | |
|--|------------------|
| Salaries and wages | \$14,394,153 |
| Operating expenses | 10,835,600 |
| Equipment | 500,000 |
| Capital improvements | 105,000 |
| Contingency | <u>1,500,000</u> |
| Total appropriation from Bank of North Dakota fund | \$27,334,753 |

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

| | |
|---|------------------|
| Partnership in assisting community expansion fund | \$6,000,000 |
| Agriculture partnership in assisting community expansion fund | 1,500,000 |
| Beginning entrepreneur loan guarantee program | 10,000 |
| Beginning farmer | <u>1,000,000</u> |
| Total general fund appropriation | \$8,510,000 |

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

| | |
|---|--------------|
| Salaries and wages | \$12,390,674 |
| Operating expenses | 7,834,814 |
| Contingency | 250,000 |
| Agriculture promotion | 50,000 |
| Total appropriation from mill and elevator fund | \$20,525,488 |

Subdivision 5.

HOUSING FINANCE AGENCY

| | |
|--|---------------|
| Salaries and wages | \$2,733,217 |
| Operating expenses | 2,570,690 |
| Equipment | 75,000 |
| Grants | 18,213,040 |
| Contingency | 100,000 |
| Total appropriation from housing finance agency fund | \$23,691,947 |
| Grand total general fund appropriation H. B. 1015 | \$29,080,468 |
| Grand total special funds appropriation H. B. 1015 | \$85,319,823 |
| Grand total all funds appropriation H.B. 1015 | \$114,400,291 |

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is hereby appropriated any additional income or unanticipated income from federal or other funds that may become available to the agency for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. APPROPRIATION - EMERGENCY COMMISSION APPROVAL. 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 that 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, 1999, and ending June 30, 2001.

SECTION 4. TRANSFER. The sum of \$66,473, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 1999, and ending June 30, 2001, upon order of the industrial commission.

SECTION 5. TRANSFER. The sum of \$86,706, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred during the biennium beginning July 1, 1999, and ending June 30, 2001, upon order of the industrial commission.

SECTION 6. TRANSFER. The sum of \$57,803, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 1999, and ending June 30, 2001, upon order of the industrial commission.

SECTION 7. TRANSFER. The sum of \$20,231, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the revenues of the municipal bond

bank. The available moneys must be transferred during the biennium beginning July 1, 1999, and ending June 30, 2001, 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 \$66,675, 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. The fees must be received during the biennium beginning July 1, 1999, and ending June 30, 2001, upon order of the industrial commission.

SECTION 9. TRANSFER. The industrial commission shall transfer to the general fund in the state treasury, the sum of \$3,000,000 from the North Dakota mill and elevator association. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$500,000, or so much of the amount as may be 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 this state. Moneys appropriated pursuant to this section may also be used for the purpose of contracting for nonmatching environmental studies and activities, and studies and activities that assist with marketing of lignite-based electricity, and lignite-based byproducts. Moneys not needed for the purposes stated herein are 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 \$15,891,168 included in subdivision 1 of section 1 of this Act in the bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 1999, and ending June 30, 2001:

| | |
|--|----------------|
| Higher education institutions | \$1,190,590 |
| General fund | 13,952,899 |
| Job service North Dakota | 345,330 |
| Federal portion for southeast human service center | 131,331 |
| Veterans' home improvement fund | <u>271,018</u> |
| Total | \$15,891,168 |

SECTION 12. APPROPRIATION - TRANSFER. The funds appropriated by subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund established by section 6-09.14-02; the agricultural partnership in assisting community expansion fund established by section 6-09.13-04; and the beginning farmer loan fund established by section 6-09-15.5, unless the beginning farmer loan fund is consolidated into the Bank of North Dakota, in the amounts set out in that subdivision. The Bank of North

Dakota may not be construed to be a general fund agency because of the appropriation made by subdivision 3 of section 1 of this Act.

SECTION 13. PACE AND AG PACE FUND TRANSFERS. Notwithstanding any other provision of law, the industrial commission may transfer any unobligated funds between the partnership in assisting community expansion fund and the agriculture partnership in assisting community expansion fund during the period beginning January 1, 2001, and ending June 30, 2001.

SECTION 14. BUDGET SECTION REPORT ON HOME MORTGAGE FINANCE PROGRAMS. The industrial commission and the Indian affairs commission shall report to the budget section regarding the status of home mortgage finance programs of the housing finance agency available within Indian reservations located within the state of North Dakota. Reports must be presented to the budget section at its first meeting of the 1999-2000 interim and subsequently thereafter as requested by the chairman of the budget section.

SECTION 15. EMERGENCY. The appropriation in subdivision 3 of section 1 and the transfer in section 12 of this Act for the partnership in assisting community expansion fund and section 14 are declared to be an emergency measure.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 16

HOUSE BILL NO. 1016

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

DEPARTMENT OF CORRECTIONS AND REHABILITATION

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to amend and reenact subsection 2 of section 12.1-32-07 and subsection 5 of section 19-03.1-23 of the North Dakota Century Code, relating to the supervision of probationers and sentencing for drug offenses; 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 corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | | |
|-----------------------------------|-------------------|------------------|
| Subdivision 1. | CENTRAL OFFICE | |
| Salaries and wages | | \$865,070 |
| Operating expenses | | 118,682 |
| Equipment | | <u>26,950</u> |
| Total general fund appropriation | | \$1,010,702 |
| Subdivision 2. | JUVENILE SERVICES | |
| Salaries and wages | | \$9,552,045 |
| Operating expenses | | 4,344,374 |
| Equipment | | 123,571 |
| Capital improvements | | 74,500 |
| Grants | | 2,870,900 |
| Delinquency prevention consortium | | <u>200,000</u> |
| Total all funds | | \$17,165,390 |
| Less estimated income | | <u>5,839,216</u> |
| Total general fund appropriation | | \$11,326,174 |
| Subdivision 3. | ADULT SERVICES | |
| Victim services | | \$2,609,036 |
| Institutional offender services | | 821,649 |
| Community offender services | | 9,836,759 |
| Support services | | 19,350,252 |
| Program services | | 3,833,361 |
| Security and safety | | 20,465,352 |
| Roughrider industries | | <u>7,521,794</u> |
| Total all funds | | \$64,438,203 |

| | |
|---|--------------|
| Less estimated income | 14,865,710 |
| Total general fund appropriation | \$49,572,493 |
| Grand total general fund appropriation H.B. 1016 | \$61,909,369 |
| Grand total special funds appropriation H.B. 1016 | \$20,704,926 |
| Grand total all funds appropriation H.B. 1016 | \$82,614,295 |

SECTION 2. TRANSFER AUTHORITY - BUDGET SECTION APPROVAL.

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.

SECTION 3. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL.

Upon approval of the emergency commission, the director of the department of corrections and rehabilitation may transfer between the various line items in subdivision 3 of section 1 of this Act, appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 4. LAND BOARD DISTRIBUTIONS. Notwithstanding the provisions of section 15-03-05.2, during the 1999-2001 biennium, the board of university and school lands shall distribute to the youth correctional center all income from permanent funds managed for the benefit of that institution.

SECTION 5. CAPITAL PROJECT - ADULT SERVICES DIVISION. The support services line item in subdivision 3 of section 1 of this Act includes up to \$198,000 from the state general fund which must be used by the department of corrections and rehabilitation for the construction of a security fence around the roughrider industries building at the penitentiary during the 1999-2001 biennium.

² **SECTION 6. AMENDMENT.** Subsection 2 of section 12.1-32-07 of 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~~ thirty-six dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship.

SECTION 7. AMENDMENT. Subsection 5 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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

² Section 12.1-32-07 was also amended by section 2 of Senate Bill No. 2305, chapter 124.

subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

SECTION 8. 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 to the department of corrections and rehabilitation for the purpose of defraying its expenses for the period beginning with the effective date of this Act and ending June 30, 1999, as follows:

| | |
|---------------------|---------------|
| Operating expenses | \$15,000 |
| Equipment | <u>18,209</u> |
| Total special funds | \$33,209 |

SECTION 9. EFFECTIVE DATE. Section 6 of this Act is effective for fees collected after December 31, 2000, for offenses committed after June 30, 1999.

SECTION 10. EMERGENCY. Sections 7 and 8 of this Act are declared to be an emergency measure.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 17

HOUSE BILL NO. 1017

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

JOB SERVICE NORTH DAKOTA

AN ACT to provide an appropriation for defraying the expenses of job service North Dakota; to provide for a report to the budget section; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 job service North Dakota for the purpose of defraying its expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|-------------------|
| Salaries and wages | \$31,431,972 |
| Operating expenses | 11,237,676 |
| Equipment | 887,100 |
| Capital improvements | 493,553 |
| Grants | 7,977,253 |
| Work Force 2000 | <u>1,250,676</u> |
| Total all funds | \$53,278,230 |
| Less estimated income | <u>52,028,230</u> |
| Total general fund appropriation | \$1,250,000 |

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, 1999, and ending June 30, 2001.

SECTION 3. 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, to job service North Dakota for the purpose of defraying its expenses, for the period beginning with the effective date of this Act and ending June 30, 1999, as follows:

| | |
|---------------------|----------------|
| Operating expenses | \$707,580 |
| Equipment | <u>460,600</u> |
| Total special funds | \$1,168,180 |

SECTION 4. WORK FORCE 2000 ALLOCATIONS. For the year beginning July 1, 1999, a minimum of \$100,000, of the \$1,250,676 provided for work force 2000, must be available for projects in areas of the state that are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. Any work force 2000 funds remaining after June 30, 2000, may be used for projects in any area of the state.

SECTION 5. WORK FORCE 2000. The work force 2000 funding contained in section 1 of this Act is only to be used by job service North Dakota for training to assist expanding businesses, new businesses creating new jobs, training which requires substantive instruction resulting from the introduction of new technologies or equipment, or training related to significant changes in business operations or production methods.

SECTION 6. ASBESTOS SETTLEMENT FUNDS - REPORT TO BUDGET SECTION. Job service North Dakota is to deposit all asbestos settlement proceeds in a special asbestos abatement fund. All earnings on the asbestos abatement fund are to be deposited in the asbestos abatement fund. The asbestos abatement fund shall only be used for job service North Dakota asbestos abatement projects. Funds in the asbestos abatement fund may only be spent pursuant to legislative appropriation. Job service North Dakota shall report to the budget section on the status of its asbestos abatement project.

SECTION 7. DEPARTMENT OF LABOR WAIVER. Job service North Dakota shall seek a waiver from the federal department of labor for the authority to use excess administrative funding, created through administrative efficiencies, for program costs.

SECTION 8. PUBLIC TRANSPORTATION PROVIDER PAYMENTS. Job service North Dakota shall reimburse, upon receipt of a detailed billing, public transportation providers for transportation services provided to welfare-to-work recipients. The rate of reimbursement must be at the same rate the public transportation provider charges to non-welfare-to-work recipients using the public transportation services. Total reimbursements to public transportation providers may not exceed \$225,000 per biennium.

SECTION 9. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 18

HOUSE BILL NO. 1018

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

OFFICE OF ADMINISTRATIVE HEARINGS

AN ACT to provide an appropriation for defraying the expenses of the office of administrative hearings; and to authorize a loan from the Bank of 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 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, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|---------------|
| Salaries and wages | \$605,464 |
| Operating expenses | 790,697 |
| Equipment | <u>26,350</u> |
| Total special fund appropriation | \$1,422,511 |

SECTION 2. OFFICE OF ADMINISTRATIVE HEARINGS - LOAN FROM BANK OF NORTH DAKOTA - APPROPRIATION OF LOAN REPAYMENT. Notwithstanding any other provision of law, the office of administrative hearings may borrow up to \$150,000, which amount is hereby appropriated from the Bank of North Dakota during the biennium beginning July 1, 1999, and ending June 30, 2001. The office of administrative hearings shall inform the office of management and budget of any loan required pursuant to this section. A loan made to the office of administrative hearings under this section must be repaid to the Bank of North Dakota by June 30, 2001, and any loan repayments made by the office of administrative hearings are hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001. The office of administrative hearings may include any related interest costs in agency billings for services.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 19

HOUSE BILL NO. 1019

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

ECONOMIC DEVELOPMENT AND FINANCE

AN ACT to provide an appropriation for defraying the expenses of the department of economic development and finance and to the agricultural products utilization commission for grants; to provide for transfers of funds; to authorize a mutual fund capital pool; to create and enact a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to excepting officers and employees of the department of economic development and finance from the state classified service; to amend and reenact sections 4-14.1-03.1, 4-14.1-07, and 57-43.1-03.1 of the North Dakota Century Code, relating to grant repayments and ethanol plant production incentives for fuel used for agricultural purposes; to provide for a legislative council study; to provide legislative intent; 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 department of economic development and finance for the purpose of defraying its expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|-----------------------------------|------------------|
| Salaries and wages | \$2,548,086 |
| Operating expenses | 2,158,447 |
| Equipment | 96,358 |
| Grants | 1,968,061 |
| North Dakota development fund | 750,000 |
| Agricultural products utilization | <u>3,985,911</u> |
| Total all funds | \$11,506,863 |
| Less estimated income | <u>3,693,075</u> |
| Total general fund appropriation | \$7,813,788 |

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the agricultural fuel tax 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 agricultural products utilization commission for the purpose of obtaining assistance in resolving beef industry trade issues, for the biennium beginning July 1, 1999, and ending June 30, 2001. Notwithstanding any other provisions of law, the agricultural products utilization commission may use these funds to obtain the assistance of the ranchers and cattlemen action legal foundation.

SECTION 3. APPROPRIATION - EMERGENCY COMMISSION APPROVAL. All income received in excess of the amounts appropriated in section 1 of this Act relating to agricultural products utilization commission activities is hereby appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1999, and ending

June 30, 2001. Any funds received require the approval of the emergency commission before they may be expended.

SECTION 4. AGRICULTURAL FUEL TAX FUND. The estimated income line item in section 1 of this Act includes \$995,046 from the agricultural fuel tax fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 5. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES - INFORMATION FILED WITH BUDGET SECTION - CONTINGENT TRANSFER. The estimated income line item in section 1 of this Act includes \$1,507,000, 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, \$1,500,000 is for the purpose of providing production incentives and \$7,000 is for audits of the use of these funds for the biennium beginning July 1, 1999, and ending June 30, 2001. 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 [3.79 liters] 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 producer's 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. 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 the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program. If, at the end of each fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of the office of management and budget shall transfer from the highway tax distribution fund the amount of unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1 to the agricultural fuel tax fund for the agricultural products utilization commission for the purpose of providing grants as provided by law.

SECTION 6. EXEMPTION. The funds appropriated in the agricultural products utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item relating to grants awarded may be available for continued payment of grant awarded but not paid during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 7. LEGISLATIVE INTENT - ETHANOL INCENTIVE PAYMENTS. It is the intent of the legislative assembly that of the appropriation of \$1,500,000 contained in section 1 of this Act for ethanol incentives, a maximum of \$750,000 may be paid annually to the producers of agriculturally-derived fuel during the 1999-2001 biennium. For purposes of this section "agriculturally-derived fuel" means fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added.

SECTION 8. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS. The \$750,000 transferred to the North Dakota development fund must be dedicated for projects as follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and twenty percent North Dakota American Indian

businesses. Any unused funds in any category may be transferred to another category during the second year of the biennium under rules adopted by the director of the department of economic development and finance. The director of the department of economic development and finance may reallocate up to twenty percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions for the biennium beginning July 1, 1999, and ending June 30, 2001. Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated balance on July 1, 1999, relating to the transfer of regional rural development revolving loan fund moneys, must continue to be dedicated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state that are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02.

SECTION 9. ECONOMIC DEVELOPMENT FUNDS - WAGE REQUIREMENTS. Any political subdivision or economic development authority may adopt a minimum wage requirement for any new business or business expansion in which a majority of the capital is provided by the North Dakota development fund and its own local development funds. These wage requirements may be imposed on all or any portion of the employees and may exceed federal minimum wage requirements.

SECTION 10. AMENDMENT. Section 4-14.1-03.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03.1. Agricultural products utilization commission - Authority. 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. The commission may administer 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, agricultural prototype development grant program, and a North American marketing grant program. The commission may require, by contract, repayment of a grant, in whole or in part, if the grant recipient does not fulfill the conditions under which the grant was awarded.

³ **SECTION 11. AMENDMENT.** Section 4-14.1-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-07. Duration and limitation of ethanol plant production incentives. Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.

1. An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than ~~five~~ twelve fiscal years of operation after June 30,

³ Section 4-14.1-07 was also amended by section 23 of Senate Bill No. 2015, chapter 37.

1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than ~~ten~~ twelve fiscal years of operation. After December 31, ~~2007~~ 2009, the state may not provide production incentives in the form of direct payments to any ethanol plant.

2. An ethanol plant that was in operation before July 1, 1995, and which produced fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to ~~one million~~ seven hundred fifty thousand dollars in production incentives from the state for production in a fiscal year. ~~An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more of ethanol in the previous fiscal year and an ethanol plant that begins operation after June 30, 1995, are each eligible to receive an equal share in up to five hundred thousand dollars in production incentives from the state for production in a fiscal year.~~

⁴ **SECTION 12.** A new subsection to section 54-44.3-20 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Officers and employees of the department of economic development and finance.

SECTION 13. AMENDMENT. Section 57-43.1-03.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective until December 31, ~~1999~~ 2001) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund, one cent per gallon [3.79 liters] withheld from the refund must be retained in the highway tax distribution fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

(Effective January 1, ~~2000~~ 2002) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

SECTION 14. MUTUAL FUND CAPITAL POOL - AUTHORIZATION. The department of economic development and finance, in conjunction with the

⁴ Section 54-44.3-20 was also amended by section 45 of House Bill No. 1188, chapter 162, and section 1 of Senate Bill No. 2291, chapter 473.

agricultural products utilization commission, may establish a mutual fund capital pool to attract farm and nonfarm investments in value-added processing projects.

SECTION 15. APPROPRIATION - CONTINGENT ETHANOL INCENTIVE PAYMENTS. In addition to the ethanol incentive payments provided in section 1 of this Act and notwithstanding any other sections of law, there is hereby appropriated \$300,000, or so much of the sum as may be necessary, from the highway tax distribution fund for the biennium beginning July 1, 1999, and ending June 30, 2001, for the purpose of providing production incentives to any ethanol plant that becomes operational after July 1, 1999. An eligible plant shall receive ten cents for each gallon of agriculturally derived fuel as defined in this Act produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota.

SECTION 16. LEGISLATIVE COUNCIL STUDY - ECONOMIC DEVELOPMENT AND FINANCE EFFORTS. The legislative council shall consider studying during the 1999-2000 interim the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness, the potential for the privatization of the department of economic development and finance, and the appropriate location of the North Dakota development fund, including the potential transfer of the fund to the Bank of North Dakota.

SECTION 17. LEGISLATIVE INTENT - GRANT ALLOCATION - UNITED STATES DEPARTMENT OF AGRICULTURE DESIGNATED CHAMPION COMMUNITIES. It is the intent of the legislative assembly that \$50,000 of the grants line item in section 1 of this Act be allocated to provide matching funds on a dollar-for-dollar basis to United States department of agriculture designated champion communities for the funding of an economic development coordinator employed by the champion communities to assist in economic development. Local matching funds may be in cash or in-kind contributions.

SECTION 18. LEGISLATIVE INTENT - GRANTS LINE ITEM. It is the intent of the legislative assembly that \$150,000 of the grants line item in section 1 of this Act be available for the manufacturing technology partnership.

SECTION 19. EFFECTIVE DATE. Section 13 of this Act is effective for refund claims for motor vehicle fuel taxes paid after December 31, 1998.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 20**HOUSE BILL NO. 1020**

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

**BOARD FOR VOCATIONAL AND TECHNICAL
EDUCATION**

AN ACT to provide an appropriation for defraying the expenses of the state board for vocational and technical 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 for vocational and technical education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|---|--------------|
| Salaries and wages | \$2,688,484 |
| Operating expenses | 567,192 |
| Equipment | 60,000 |
| Grants | 23,788,522 |
| Adult farm management | 525,760 |
| Postsecondary education vocational grants | 357,452 |
| Total all funds | \$27,987,410 |
| Less estimated income | 15,733,019 |
| Total general fund appropriation | \$12,254,391 |

SECTION 2. LEGISLATIVE INTENT - FARM MANAGEMENT PROGRAM FEES. It is the intent of the fifty-sixth legislative assembly that all fees collected for farm management programs pursuant to sections 6-09.10-02.1 and 6-09.10-06 be transferred to the state board for vocational and technical education. The state board for vocational and technical education shall distribute the fees as it determines necessary to state agencies and organizations involved in providing farm management programs.

Approved April 17, 1999

Filed April 19, 1999

CHAPTER 21

HOUSE BILL NO. 1021

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

EXTENSION SERVICE, CROPS INSTITUTE, TRANSPORTATION INSTITUTE, EXPERIMENT CENTERS, AND SEED FARM

AN ACT to provide an appropriation for defraying the expenses of the extension service, northern crops institute, upper great plains transportation institute, and the experiment centers; to provide for dairy diagnostic teams; to provide statements of legislative intent; and to amend and reenact sections 4-05.1-02, 4-05.1-04, 4-05.1-16, 4-05.1-17, 4-05.1-18, 4-05.1-19, 4-05.1-21, and 4-08-10 of the North Dakota Century Code, relating to the state board of agricultural research.

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, the upper great plains transportation institute, and the North Dakota agricultural experiment centers for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

| | |
|----------------------------------|-------------------|
| Salaries and wages | \$24,795,190 |
| Operating expenses | 3,656,836 |
| Equipment | 517,850 |
| Grants | <u>580,000</u> |
| Total all funds | \$29,549,876 |
| Less estimated income | <u>16,732,669</u> |
| Total general fund appropriation | \$12,817,207 |

Subdivision 2.

NORTHERN CROPS INSTITUTE

| | |
|----------------------------------|----------------|
| Salaries and wages | \$878,518 |
| Operating expenses | 118,650 |
| Equipment | <u>72,880</u> |
| Total all funds | \$1,070,048 |
| Less estimated income | <u>407,957</u> |
| Total general fund appropriation | \$662,091 |

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

| | |
|--------------------|-------------|
| Salaries and wages | \$3,076,552 |
| Operating expenses | 2,268,108 |
| Equipment | 256,000 |

| | |
|----------------------------------|--------------------|
| Grants | <u>1,150,000</u> |
| Total all funds | <u>\$6,750,660</u> |
| Less estimated income | <u>6,268,240</u> |
| Total general fund appropriation | <u>\$482,420</u> |

Subdivision 4.

MAIN RESEARCH CENTER

| | |
|----------------------------------|---------------------|
| Salaries and wages | \$37,935,339 |
| Operating expenses | 4,193,330 |
| Equipment | 1,532,746 |
| Capital improvements | 748,800 |
| Agricultural research grants | 2,000,000 |
| Animal replacement | 300,000 |
| Total all funds | <u>\$46,710,215</u> |
| Less estimated income | <u>20,553,068</u> |
| Total general fund appropriation | <u>\$26,157,147</u> |

Subdivision 5.

RESEARCH CENTERS

| | |
|------------------------------------|---------------------|
| Dickinson research center | \$2,314,316 |
| Central grasslands research center | 1,379,963 |
| Hettinger research center | 1,297,740 |
| Langdon research center | 1,075,049 |
| North central research center | 1,301,950 |
| Williston research center | 1,123,230 |
| Carrington research center | <u>2,435,452</u> |
| Total all funds | <u>\$10,927,700</u> |
| Less estimated income | <u>3,921,409</u> |
| Total general fund appropriation | <u>\$7,006,291</u> |

Subdivision 6.

AGRONOMY SEED FARM

| | |
|---|---------------------|
| Agronomy seed farm | <u>\$1,202,339</u> |
| Total special funds appropriation | <u>\$1,202,339</u> |
| Grand total general fund appropriation H.B. 1021 | \$47,125,156 |
| Grand total special funds appropriation H.B. 1021 | \$49,085,682 |
| Grand total all funds appropriation H.B. 1021 | <u>\$96,210,838</u> |

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, upper great plains transportation 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 for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. UNEXPENDED GENERAL FUND - EXCESS INCOME. Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 1 of this Act are not subject to the provisions of section 54-44.1-11 and any unexpended funds from these appropriations or revenues are available and may be expended during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. 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 the transfer.

SECTION 5. TRANSFER AUTHORITY. Upon approval of the state board of higher education and the state board of agricultural research and education, the director of the North Dakota agricultural experiment station may transfer appropriation authority from subdivision 4 to subdivision 5 of section 1 of this Act and shall notify the office of management and budget within ten days.

SECTION 6. INITIATIVES - TRANSFER AUTHORITY. Upon approval of the state board of agricultural research and education, the director of the North Dakota agricultural experiment station may transfer appropriation authority of up to \$227,335 from subdivision 4 to subdivision 1 of section 1 of this Act and shall notify the office of management and budget within ten days.

SECTION 7. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. The board of higher education is authorized to adjust or increase full-time equivalent positions as needed, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 2001-03 budget request.

SECTION 8. TRANSFER AUTHORITY. The state board of higher education is authorized to transfer to the entities in subdivisions 1 through 3 and subdivision 5 of section 1 of this Act from subdivision 4 of section 1 of this Act up to \$422,400 to provide salary adjustments. The state board of higher education shall notify the office of management and budget within ten days of the transfer.

SECTION 9. Dairy diagnostic teams. The North Dakota state university extension service shall appoint regional dairy diagnostic teams consisting of agricultural business management professionals, dairy extension specialists, and dairy industry partners such as nutrition specialists, reproductive specialists, and animal health specialists. At the request of a dairy producer, a dairy diagnostic team shall conduct a site visit, offer the dairy producer educational and technological assistance, and develop a strategic plan to enhance the producer's productivity and profitability.

SECTION 10. ESTIMATED INCOME - MAIN RESEARCH CENTER - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in subdivision 4 of section 1 of this Act includes the sum of \$90,000, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of constructing chemical handling facilities at select research centers for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 11. ESTIMATED INCOME - TRANSPORTATION INSTITUTE - DEPARTMENT OF TRANSPORTATION. The estimated income line item in subdivision 3 of section 1 of this Act includes \$188,000 of federal strategic planning and research funds from the department of transportation. The director of the department of transportation may not transfer the \$188,000 of federal funds until the director of the upper great plains transportation institute has certified to the department of transportation that the institute has raised \$100,000 to supplement the federal funds available from the department of transportation for the strategic freight transportation analysis for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 12. LEGISLATIVE INTENT - SOIL CONSERVATION DISTRICT SUPERVISOR TRAINING. It is the intent of the fifty-sixth legislative assembly that the NDSU extension service use the funding provided for the soil conservation leadership initiative only for providing training to soil conservation district supervisors and that the training address specific issues and concerns of the local district supervisors for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 13. STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION - REPORT TO LEGISLATIVE COUNCIL. The state board of agricultural research and education shall report periodically to the legislative council or a committee designated by the council on its activities associated with researching and developing market opportunities for biotechnologically enhanced crops for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 14. AMENDMENT. Section 4-05.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-02. Agricultural experiment station. The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota agricultural experiment station subject to the supervision of the state board of higher education. Funds appropriated to the agricultural experiment station may not be commingled with funds appropriated to North Dakota state university. Appropriation requests to defray expenses of the agricultural experiment station must be separate from appropriation requests to defray expenses of North Dakota state university.

SECTION 15. AMENDMENT. Section 4-05.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-04. Reports. Each center director shall submit an annual report to the station director as directed by the state board of agricultural research and education. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education on or before the first day of September of each year. If the state board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the report must include a composite of the reports from the main research center and each research extension center.

SECTION 16. AMENDMENT. Section 4-05.1-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-16. State board of agricultural research and education - Membership - Terms.

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university;
 - b. The vice president of agricultural affairs at North Dakota state university;
 - c. The administrator of the agricultural experiment station;

- d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;
 - g. The commissioner of agriculture, who serves in an ex officio nonvoting capacity; and
 - h. The director of the North Dakota state university extension service, ~~who serves in an ex officio capacity.~~
2.
 - a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - c. The two persons appointed as representatives of the state's research extension centers shall serve only through June 30, 1998.
 3. At the completion of each initial term, the term of office for each member is five years, beginning on July first. No person may be appointed to a second five-year term.
 4.
 - a. At least ninety days before the conclusion of the initial term of each member appointed by the ag coalition, the ag coalition shall provide to the state board of higher education a list of ~~two~~ one or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.
 - b. At least ninety days before the conclusion of the initial term of each member appointed by the extension service's multicounty program units, the units through their advisory groups shall provide to the state board of higher education a list of ~~two~~ one or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

SECTION 17. AMENDMENT. Section 4-05.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-17. Compensation of board members - Expenses. Each appointed member of the state board of agricultural research and education is entitled to receive sixty-two dollars and fifty cents per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

SECTION 18. AMENDMENT. Section 4-05.1-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-18. State board of agricultural research and education - Chairman - Meetings. The state board of agricultural research and education annually shall elect one of its members to serve as chairman. The board shall meet at the times and locations designated by the chairman in consultation with the vice president of agricultural affairs at North Dakota state university.

SECTION 19. AMENDMENT. Section 4-05.1-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-19. State board of agricultural research and education - Duties. Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for the budgeting, supervision, and policymaking responsibilities associated with the supervision of the agricultural experiment station and the North Dakota state university extension service. The agricultural research and education board shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions to negate adverse economic impacts on crops and livestock produced in this state;
3. Make available financial resources, including grants and salaries, and make available equipment and facilities to implement the strategies developed under subsection 2, subject to approval by the state board of higher education;
4. Develop an annual budget for the operation of the agricultural experiment station and the North Dakota state university extension service;
5. Develop a biennial budget request and submit that request to the state board of higher education on or before March first of each even-numbered year;
6. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;
7. Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative council and the state board of higher education;

8. Advise the administration of North Dakota state university regarding the recruitment and selection of the vice president of agricultural affairs, the extension service director, and the station director; and
9. ~~Advise the director of the extension service regarding~~ Develop ongoing strategies for the dissemination of research information and the best practices for management of the extension service.

SECTION 20. AMENDMENT. Section 4-05.1-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-21. State board of agricultural research and education - Apportionment of research funds.

1. The state board of agricultural research and education annually shall apportion the proceeds of the agricultural research fund as follows:
 - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
 - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and
 - c. Twelve percent to research activities affecting new and emerging crops in North Dakota.
2. The state board of agricultural research and education shall solicit proposals for research from the public and private sectors and shall appoint committees to review the proposals and award the agricultural research grants on a competitive basis. Each committee must consist of a majority of agricultural producers selected in consultation with the agricultural commodity groups representing commodities that are the subjects of the proposed research and may include researchers and other individuals knowledgeable about the proposed area of research. Whenever possible, the committees shall require that a grant recipient commit matching funds.
3. The state board of agricultural research and education shall develop policies regarding the award of research grants, including requirements for matching funds, cooperation with other in-state and out-of-state researchers, and coordination with other in-state and out-of-state proposed or ongoing research projects.

SECTION 21. AMENDMENT. Section 4-08-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-08-10. Extension agent to submit monthly account of expenditures.

The extension agent shall submit monthly an accurate itemized account of all expenditures incurred by the agent in the regular conduct of duties to the North Dakota state university extension service for examination and audit. When charges are made by an extension agent for money expended in the performance of official duties, all items of one dollar or more expended and charged for must be covered by a subvoucher or receipt that must be signed by the person to whom the money was paid. The subvoucher or receipt must show at what place, on what date, and for what the money expended was paid. The extension agent shall forward the subvouchers or receipts with the bill, claim, account, or demand against the county. When charges are made for transportation expenses, they may not exceed the amounts provided by section 11-10-15, and must be in itemized form showing the mileage traveled, the days when and how traveled, and the purpose thereof, verified by affidavit. The account must be transmitted and recommended for payment by the North Dakota state university extension service which shall audit the same and which may approve or disallow any expense item therein. The state board of agricultural research and education and the president of North Dakota state university shall control and administer the North Dakota state university extension service ~~is under the control, and~~ subject to the supervision, of the state board of higher education. Funds appropriated to the North Dakota state university extension service may not be commingled with funds appropriated to North Dakota state university. An appropriation request to defray expenses of the North Dakota state university extension service must be separate from an appropriation request to defray expenses of North Dakota state university.

Approved April 17, 1999

Filed April 19, 1999

CHAPTER 22

HOUSE BILL NO. 1022

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments and institutions; to authorize the industrial commission to issue and sell bonds for capital projects; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota 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 chapter 54-17.2, during the biennium beginning July 1, 1999, and ending June 30, 2001. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 1999, and ending June 30, 2001, for the following projects:

| | | |
|---|---|-------------|
| UND-Williston | Health and wellness center addition | \$4,500,000 |
| North Dakota state university | Animal research facility | 2,207,500 |
| Department of corrections and rehabilitation | Pine cottage - Youth correctional center | 1,475,000 |

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2001. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 2001, 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.

North Dakota state university may obtain and utilize federal funds to assist in the construction of an animal research facility at North Dakota state university. There is hereby appropriated to North Dakota state university the sum of \$2,207,500, 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, 1999, and ending June 30, 2001.

The department of corrections and rehabilitation may obtain and utilize federal funds to assist in the renovation of pine cottage at the youth correctional center. There is hereby appropriated to the department of corrections and rehabilitation the sum of \$500,000, 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, 1999, and ending June 30, 2001.

| | |
|---|--------------|
| Grand total special funds appropriation | \$10,890,000 |
|---|--------------|

SECTION 2. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Of the total amount of evidences of indebtedness issued under the provisions of section 1 of this Act, a total of \$3,000,000 must be available from nongeneral fund sources 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:

UND-Williston \$3,000,000

The university of North Dakota-Williston shall provide \$1,500,000 of funding towards the health and wellness center addition before construction may begin. The remaining \$1,500,000 of local responsibility is to be paid in ten annual payments of \$150,000.

If the project is reduced in size and funding, the local responsibility is to be reduced proportionately.

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

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 23

SENATE BILL NO. 2001

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

GOVERNOR

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

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 office of the governor for the purpose of defraying the expenses of the governor, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|--------------------|
| Salaries and wages | \$1,876,350 |
| Operating expenses | 198,870 |
| Equipment | 4,200 |
| Contingency | 10,000 |
| Presidential electors | 500 |
| Governor's transition in | 10,000 |
| Governor's transition out | 5,000 |
| Rough rider awards | <u>10,800</u> |
| Total general fund appropriation | <u>\$2,115,720</u> |

SECTION 2. 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 which become available during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. AMENDMENT. Section 54-07-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is ~~seventy-three~~ seventy-six thousand ~~one~~ eight hundred ~~seventy-six~~ seventy-nine dollars through June 30, ~~1998~~ 2000, ~~seventy-eight~~ seventy-eight thousand four hundred ~~seventeen~~ thirteen dollars through December 31, 2000, and ~~seventy-five~~ eighty-three thousand ~~three~~ thirteen dollars thereafter.

SECTION 4. AMENDMENT. Section 54-08-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~sixty~~ sixty-three thousand one hundred ~~thirty-two~~ eighty-three dollars through June 30, ~~1998~~ 2000, and ~~sixty-one~~ sixty-four thousand ~~nine~~ four hundred ~~forty-four~~ forty-seven dollars thereafter.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 24**SENATE BILL NO. 2002**

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

SECRETARY OF STATE

AN ACT to provide an appropriation for defraying the expenses of the secretary of state and public printing; to provide for line item transfers for the 1997-99 biennium; to create and enact a new section to chapter 54-09 of the North Dakota Century Code, relating to the secretary of state's general services operating fund; to amend and reenact sections 41-09-42.1 and 54-09-05 of the North Dakota Century Code, relating to fees collected by the secretary of state and the salary of the secretary of state; 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 secretary of state for the purpose of defraying the expenses of the secretary of state and public printing, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

SECRETARY OF STATE

| | |
|----------------------------------|----------------|
| Salaries and wages | \$1,827,218 |
| Operating expenses | 1,673,790 |
| Equipment | 60,000 |
| Petition review | <u>12,000</u> |
| Total all funds | \$3,573,008 |
| Less estimated income | <u>250,000</u> |
| Total general fund appropriation | \$3,323,008 |

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

| | |
|---|------------------|
| Operating expenses | <u>\$535,200</u> |
| Total general fund appropriation | \$535,200 |
| Grand total general fund appropriation S.B. 2002 | \$3,858,208 |
| Grand total special funds appropriation S.B. 2002 | \$250,000 |
| Grand total all funds appropriation S.B. 2002 | \$4,108,208 |

SECTION 2. LINE ITEM TRANSFERS - 1997-99 BIENNIUM.

Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer, at the request of the secretary of state, shall transfer \$7,000 from the operating expenses line item contained in subdivision 1 of section 1 of chapter 2 of the 1997 Session Laws to the equipment line item contained in subdivision 1 of section 1 of chapter 2 of the 1997 Session Laws. The authority to make this transfer begins with the effective date of this Act and ends on June 30, 1999.

SECTION 3. AMENDMENT. Section 41-09-42.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-42.1. Fees collected by secretary of state. Any fees collected by the secretary of state pursuant to section 41-09-42, except for fees collected under subsections 8 and 11, must be deposited in the general fund in the state treasury. Fees collected pursuant to subsections 8 and 11 of section 41-09-42 must be deposited in the secretary of state's general services operating fund.

SECTION 4. A new section to chapter 54-09 of the North Dakota Century Code is created and enacted as follows:

Secretary of state's general services operating fund. The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under subsections 8 and 11 of section 41-09-42 and subsection 10 of section 54-09-04. At the close of each fiscal year, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

SECTION 5. AMENDMENT. Section 54-09-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~fifty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, ~~fifty-nine~~ fifty-nine thousand ~~four~~ four hundred ~~twenty-eight~~ twenty-eight dollars through December 31, 2000, and ~~fifty-seven~~ sixty-one thousand ~~one~~ one hundred ~~twenty~~ forty-two dollars thereafter.

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

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 25

SENATE BILL NO. 2003

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

ATTORNEY GENERAL

AN ACT to provide an appropriation for defraying the expenses of the attorney general; to provide statements of legislative intent; to amend and reenact subsection 3 of section 53-06.1-14 and section 54-12-11 of the North Dakota Century Code, relating to gaming stamp fees and the salary of the attorney general; 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 attorney general for the purpose of defraying the expenses of the attorney general, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|---|--------------|
| Salaries and wages | \$13,981,817 |
| Operating expenses | 4,572,703 |
| Equipment | 811,710 |
| Grants | 5,396,025 |
| Litigation fees | 50,000 |
| Arrest and return of fugitives | 10,000 |
| Gaming commission | 5,109 |
| Racing commission | 222,067 |
| National criminal history improvement project | 2,344,118 |
| Law enforcement programs | 627,280 |
| High-intensity drug trafficking area | 1,604,175 |
| Total all funds | \$29,625,004 |
| Less estimated income | 15,894,903 |
| Total general fund appropriation | \$13,730,101 |

SECTION 2. FIRE AND TORNADO FUND. The estimated income line item in section 1 of this Act includes the sum of \$385,517, 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 3. LEGISLATIVE INTENT - STATE FIRE MARSHAL PROGRAM. It is the intent of the legislative assembly that the attorney general charge and collect a fee for services provided by the state fire marshal program to entities insured by the fire and tornado fund. For services provided to entities not insured by the fire and tornado fund, the attorney general is to prepare and submit a memorandum billing to the entity receiving the service. For the purpose of this section a "memorandum billing" means a document detailing services and cost of services provided. The memorandum billing does not require a remittance of funds.

SECTION 4. ASSET FORFEITURE FUND. The sum of \$74,201 is available from the asset forfeiture fund to the attorney general as included in the estimated income line item in section 1 of this Act.

SECTION 5. LOCAL GAMING ENFORCEMENT GRANTS. The grants line item in section 1 of this Act includes \$221,877 for local gaming enforcement grants.

SECTION 6. LEGISLATIVE INTENT - LOCAL GAMING ENFORCEMENT GRANTS. It is the intent of the legislative assembly that the attorney general, through the state treasurer's office, disburse local gaming enforcement grants based on a competitive basis in accordance with criteria established by the attorney general.

SECTION 7. LEGISLATIVE INTENT - LITIGATION FEES - EMERGENCY COMMISSION REQUEST. It is the intent of the legislative assembly that the attorney general submit a request to the emergency commission for an additional appropriation for litigation fees from the contingency fund if the \$50,000 appropriated in the litigation fees line item in section 1 of this Act is exhausted.

SECTION 8. LEGISLATIVE INTENT - ARREST AND RETURN OF FUGITIVES - EMERGENCY COMMISSION REQUEST. It is the intent of the fifty-sixth legislative assembly that the attorney general submit a request to the emergency commission for additional appropriation authority from the state contingencies appropriation for reimbursing counties for costs relating to the arrest and return of fugitives if the funding provided for this purpose in section 1 of this Act is not adequate for the biennium beginning July 1, 1999, and ending June 30, 2001.

⁵ **SECTION 9. AMENDMENT.** Subsection 3 of section 53-06.1-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold and shall purchase the stamps from the attorney general for ~~twenty-five~~ thirty-five cents each. Ten cents of each stamp sold, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing the gaming stamps.

SECTION 10. AMENDMENT. Section 54-12-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~sixty-two~~ sixty-five thousand ~~five~~ seven hundred ~~ninety-two~~ fifty-three dollars through June 30, ~~1998~~ 2000, sixty-seven thousand sixty-eight dollars through December 31, 2000, and ~~sixty-four~~ sixty-nine thousand ~~four hundred sixty-four~~ two dollars thereafter.

⁵ Section 53-06.1-14 was also amended by section 12 of Senate Bill No. 2132, chapter 441.

SECTION 11. EMERGENCY. The high-intensity drug trafficking area line item in section 1 of this Act is declared to be an emergency measure.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 26

SENATE BILL NO. 2004

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

STATE AUDITOR

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|-------------------------------------|------------------|
| Administration | \$268,538 |
| Division of local government audits | 1,204,310 |
| Division of state audits | 3,852,274 |
| Mineral royalty auditing | <u>746,196</u> |
| Total all funds | \$6,071,318 |
| Less estimated income | <u>1,950,506</u> |
| Total general fund appropriation | \$4,120,812 |

SECTION 2. APPROPRIATION. Section 1 of this Act includes an appropriation of up to \$1,204,310 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 1999, and ending June 30, 2001. Any amount in excess of \$1,204,310 must be deposited in the state auditor operating account and made available for appropriation after June 30, 2001.

SECTION 3. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the state auditor may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 4. STATEWIDE SINGLE AUDIT. The state auditor shall complete the North Dakota statewide single audit for fiscal years 1999 and 2000. The state auditor may not use additional contracted services above the amount of contracted services used to complete the statewide single audit for fiscal years 1997 and 1998.

SECTION 5. AMENDMENT. Section 54-10-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~fifty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, fifty-nine thousand four hundred twenty-eight dollars through December 31, 2000, and ~~fifty-seven~~ sixty-two thousand ~~one~~ eight hundred ~~twenty~~ fifty-five dollars thereafter.

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 27

SENATE BILL NO. 2005

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

STATE TREASURER

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|--------------|
| Salaries and wages | \$595,766 |
| Operating expenses | 95,079 |
| Equipment | <u>4,000</u> |
| Total general fund appropriation | \$694,845 |

SECTION 2. AMENDMENT. Section 54-11-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~fifty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, ~~fifty-nine~~ fifty-nine thousand ~~four~~ four hundred ~~twenty-eight~~ twenty-eight dollars through December 31, ~~2000~~, and ~~fifty-seven~~ sixty-one thousand ~~one~~ one hundred ~~twenty~~ forty-two dollars thereafter.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 28

SENATE BILL NO. 2006 (Appropriations Committee) (At the request of the Governor)

TAX COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the office of the state tax commissioner and for payment of state reimbursement under the homestead tax credit; to amend and reenact section 57-01-04 and subsection 2 of section 57-01-13 of the North Dakota Century Code, relating to the salary of the state tax commissioner and the payment of fees for services rendered by a collection or credit agency; to provide a continuing appropriation for the payment of fees for services rendered by a collection or credit agency; and to provide a contingent expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 state tax commissioner for the purpose of defraying the expenses of the state tax commissioner and paying the state reimbursement under the homestead tax credit, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

TAX COMMISSIONER

| | |
|----------------------------------|----------------|
| Salaries and wages | \$11,761,828 |
| Operating expenses | 4,678,051 |
| Equipment | 343,500 |
| City tax administration fees | 50,000 |
| Motor fuels federal grant | <u>293,729</u> |
| Total all funds | \$17,127,108 |
| Less estimated income | <u>293,729</u> |
| Total general fund appropriation | \$16,833,379 |

Subdivision 2.

HOMESTEAD TAX CREDIT

| | |
|---|--------------------|
| Grants | <u>\$4,540,813</u> |
| Total general fund appropriation | \$4,540,813 |
| Grand total general fund appropriation S.B. 2006 | \$21,374,192 |
| Grand total special funds appropriation S.B. 2006 | \$293,729 |
| Grand total all funds appropriation S.B. 2006 | \$21,667,921 |

SECTION 2. TRANSFER. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel tax revenue, collected pursuant to section 57-43.1-02, the sum of \$1,380,608 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of these taxes.

SECTION 3. EXEMPTION. The appropriation contained in section 1 of chapter 6 of the 1997 Session Laws is not subject to the provisions of section

54-44.1-11 for an amount of up to \$60,000 and this amount may be spent for continued development of "Project 2001", the department's new tax processing system, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. AMENDMENT. Section 57-01-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~fifty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, ~~fifty-nine~~ thirty-eight thousand ~~four~~ hundred ~~twenty-eight~~ dollars through December 31, 2000, and ~~fifty-seven~~ sixty-six thousand ~~one~~ two hundred ~~twenty~~ eighty-two dollars thereafter.

SECTION 5. AMENDMENT. Subsection 2 of section 57-01-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.
- b. All funds collected, ~~less the fees for collection services, as provided in the contract,~~ by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.
- c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.

SECTION 6. CONTINGENT EXPIRATION DATE. Section 5 of this Act is effective until such time as section 12 of article X of the Constitution of North Dakota is effectively amended to provide for the retention of public money by a nongovernmental entity as fees for services rendered to the state of North Dakota.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 29**SENATE BILL NO. 2007**
(Appropriations Committee)
(At the request of the Governor)**LABOR COMMISSIONER**

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from other special funds derived from federal funds, to the labor commissioner for the purpose of defraying the expenses of the labor commissioner, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|---------------|
| Salaries and wages | \$621,658 |
| Operating expenses | 110,219 |
| Equipment | <u>10,250</u> |
| Total all funds | \$742,127 |
| Less estimated income | <u>82,249</u> |
| Total general fund appropriation | \$659,878 |

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 30

SENATE BILL NO. 2008

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

PUBLIC SERVICE COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the public service commission; and to amend and reenact section 49-01-05 and subsection 3 of section 49-21-01 of the North Dakota Century Code, relating to the salary of public service commissioners and the definition of an essential telecommunications service.

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 public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|------------------|
| Salaries and wages | \$4,389,004 |
| Operating expenses | 1,067,294 |
| Equipment | 71,311 |
| Grants | 6,000 |
| AML contractual services | <u>3,668,492</u> |
| Total all funds | \$9,202,101 |
| Less estimated income | <u>5,633,045</u> |
| Total general fund appropriation | \$3,569,056 |

SECTION 2. AMENDMENT. Section 49-01-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~fifty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, fifty-nine thousand four hundred twenty-eight dollars through December 31, 2000, and ~~fifty-seven~~ sixty-four thousand ~~one~~ five hundred ~~twenty~~ sixty-nine dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity, must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

⁶ **SECTION 3. AMENDMENT.** Subsection 3 of section 49-21-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁶ Section 49-21-01 was also amended by section 1 of House Bill No. 1451, chapter 410, and section 2 of Senate Bill No. 2420, chapter 411.

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 measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
- a. Switched access;
 - b. Any new product or service offered in North Dakota after July 1, 1989, 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. Primary directory listing, including nonlisted and nonpublished service, and ~~local exchange~~ access to 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. Installation of the service connection for essential services from the end user's premises to the local exchange network;
 - h. 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.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 31

SENATE BILL NO. 2009

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

AGRICULTURE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the agriculture commissioner; to create a legislative council committee; to provide an appropriation to the legislative council; to provide a statement of legislative intent; to provide for a transfer; to create and enact a new subdivision to subsection 1 of section 57-38-01.2 and a new subdivision to subsection 3 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax exemption for indemnities received for destruction of cattle; to amend and reenact sections 4-01-21, 4-35-06.3, and 19-18-04 of the North Dakota Century Code, relating to the minor use pesticide fund, the salary of the agriculture commissioner, and pesticide registration fees; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 commissioner of agriculture for the purpose of defraying the expenses of the commissioner of agriculture for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| AGRICULTURE COMMISSIONER | |
|----------------------------------|------------------|
| Salaries and wages | \$3,128,452 |
| Operating expenses | 778,957 |
| Equipment | 22,900 |
| Grants | 161,700 |
| Board of animal health | 502,922 |
| Ag mediation | 801,681 |
| Ag in the classroom | 96,000 |
| Anhydrous ammonia storage | 8,154 |
| Waterbank program | 414,000 |
| Pride of Dakota | 151,516 |
| Wildlife services | 779,694 |
| Safe send | 573,907 |
| Noxious weeds | <u>1,174,696</u> |
| Total all funds | \$8,594,579 |
| Less estimated income | <u>4,133,216</u> |
| Total general fund appropriation | \$4,461,363 |

SECTION 2. AMENDMENT. Section 4-01-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~forty-five~~ fifty-eight thousand ~~four~~ two hundred ~~sixty-four~~ sixty-two dollars through June 30, ~~1998~~ 2000, fifty-nine thousand four

hundred twenty-eight dollars through December 31, 2000, and ~~fifty-seven~~ sixty-four thousand ~~one five~~ hundred ~~twenty~~ sixty-nine dollars thereafter.

SECTION 3. AMENDMENT. Section 4-35-06.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06.3. Minor use pesticide fund - Continuing appropriation. The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the pesticide control board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and ~~emergency uses~~ other uses as determined by the board.

SECTION 4. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:
 - ~~4.~~ a. Give the name and address of each manufacturer or distributor.
 - ~~2.~~ b. Give the name and brand of each product registered.
 - ~~3.~~ c. Be accompanied by a current label of each product so registered.
 - ~~4.~~ d. Be accompanied by a registration fee of three hundred fifty dollars for each product registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.
 - ~~5.~~ e. Be accompanied by a material safety data sheet.
2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.
3. Each registration covers a two-year period beginning January first and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within

the same month the pesticides are first manufactured or sold within this state. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

⁷ **SECTION 5.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Reduced by an amount equal to any indemnity received under this Act for the destruction of cattle infected or suspected of being infected with bovine tuberculosis.

⁸ **SECTION 6.** A new subdivision to subsection 3 of section 57-38-30.3 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

An amount equal to any indemnity received under this Act for the destruction of cattle infected or suspected of being infected with bovine tuberculosis.

SECTION 7. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$1,925,576, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of defraying the expenses of various agriculture department programs, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 8. ESTIMATED INCOME - ANHYDROUS AMMONIA STORAGE INSPECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$75,992, or so much of the sum as may be necessary, from the anhydrous ammonia storage inspection fund for the purpose of defraying the expenses of regulating anhydrous ammonia storage facilities, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 9. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$200,000, or so much of the sum as may be necessary, from the game and fish department operating fund for the waterbank program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 10. TRANSFER. The office of management and budget shall transfer \$285,000 from the environment and rangeland protection fund to the minor

⁷ Section 57-38-01.2 was also amended by section 20 of House Bill No. 1201, chapter 211, section 2 of House Bill No. 1106, chapter 487, and section 3 of House Bill No. 1106, chapter 487.

⁸ Section 57-38-30.3 was also amended by section 11 of House Bill No. 1492, chapter 369, and section 1 of House Bill No. 1113, chapter 512.

use pesticide fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 11. LEGISLATIVE COUNCIL - CROP HARMONIZATION COMMITTEE. The legislative council shall create a crop harmonization committee consisting of the chairman of the house agriculture committee, the chairman of the senate agriculture committee, and three other individuals appointed by the legislative council chairman, one of whom must represent the crop protection manufacturing industry. In consultation with the pesticide control board, the committee shall:

1. Identify and prioritize crop protection product labeling needs;
2. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act;
3. Identify the data necessary to enable registration of a use to occur in a timely manner;
4. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section and communicate its findings to the agriculture commissioner;
5. Request the agriculture commissioner to pursue specific research funding options from public and private sources; and
6. Report to the legislative council in the same manner as do other interim legislative council committees.

SECTION 12. APPROPRIATION - LEGISLATIVE COUNCIL. There is hereby appropriated out of any moneys in the minor use pesticide fund in the state treasury, not otherwise appropriated, the sum of \$15,000, or so much of the sum as may be necessary, out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000, or so much of the sum as may be necessary, and from special funds derived from grants or donation income, the sum of \$150,000, or so much of the sum as may be necessary, to the legislative council for the purpose of addressing crop protection product registration and labeling as provided for in section 11 of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 13. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that the agriculture commissioner, agricultural experiment station, and North Dakota state university extension service use resources available to them to assist in the registration of crop protection pesticides in cooperation with the crop protection industry for use in the North Dakota agriculture industry for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 14. APPROPRIATION - BOARD OF ANIMAL HEALTH - 1997-99 BIENNIUM. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$65,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of paying an indemnity and other expenses associated with destroying a herd of cattle infected with bovine tuberculosis for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 15. BUDGET SECTION REPORT. The agriculture commissioner and the state veterinarian shall periodically report to the budget section on the status

of the bovine tuberculosis disease in cattle and associated costs during the 1999-2000 interim.

SECTION 16. EFFECTIVE DATE - EXPIRATION DATE. Sections 5 and 6 of this Act are effective for the first two taxable years beginning after December 31, 1998, and are thereafter ineffective.

SECTION 17. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2001, and after that date is ineffective.

SECTION 18. EMERGENCY. Section 14 of this Act is declared to be an emergency measure.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 32

SENATE BILL NO. 2010

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

INSURANCE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to provide for the appointment of legislative representatives to the national conference of insurance legislators; and to amend and reenact subsection 3 of section 26.1-01-07.1, sections 26.1-01-09, and 26.1-23-03 of the North Dakota Century Code, relating to the cash balance of the insurance regulatory trust fund, the salary of the insurance commissioner, and the unsatisfied judgment 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 insurance regulatory trust fund in the state treasury, not otherwise appropriated, and from other special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|-----------------------------------|----------------|
| Salaries and wages | \$4,195,649 |
| Operating expenses | 1,498,289 |
| Equipment | <u>119,355</u> |
| Total special funds appropriation | \$5,813,293 |

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 \$5,200,000, 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, 1999, and ending June 30, 2001.

SECTION 3. BONDING FUND. Section 1 of this Act includes the sum of \$67,431, 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, 1999, and ending June 30, 2001.

SECTION 4. FIRE AND TORNADO FUND. Section 1 of this Act includes the sum of \$831,145, or so much of the sum as may be necessary, from the state fire and tornado fund to pay fire and tornado fund administrative expenses for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 5. UNSATISFIED JUDGMENT FUND. Section 1 of this Act includes the sum of \$4,170, or so much of the sum as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment fund administrative expenses for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. PETROLEUM TANK RELEASE COMPENSATION FUND.

Section 1 of this Act includes the sum of \$68,820, or so much of the sum as may be necessary, from the petroleum tank release compensation fund to pay petroleum tank release compensation fund administrative expenses for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 7. National conference of insurance legislators - Appointment of representatives. The chairman of the legislative council, in consultation with the insurance commissioner, shall appoint two members of the house of representatives and two members of the senate to represent the state at functions of the national conference of insurance legislators. Each member shall serve a two-year term. If a member is unable to complete the member's term, the chairman of the legislative council shall appoint another member to complete the term. The insurance commissioner shall pay the necessary expenses of the legislative members for attending functions of the national conference of insurance legislators.

SECTION 8. AMENDMENT. Subsection 3 of section 26.1-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided by law, at the end of each fiscal year, the state treasurer shall transfer, after all fiscal year expenses have been paid, any cash balance remaining in the insurance regulatory trust fund that exceeds one million ~~five hundred thousand~~ dollars to the general fund.

SECTION 9. AMENDMENT. Section 26.1-01-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~fifty-five~~ fifty-eight thousand ~~four two~~ four hundred ~~eighty-seven~~ eighty ~~sixty-two~~ two dollars through June 30, ~~1998~~ 2000, ~~fifty-seven~~ fifty-nine thousand ~~four hundred~~ four hundred ~~twenty-eight~~ twenty dollars through December 31, 2000, and ~~fifty-seven~~ twenty ~~sixty-two~~ fifty-five thousand ~~one~~ one hundred ~~twenty~~ twenty dollars thereafter.

SECTION 10. AMENDMENT. Section 26.1-23-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-23-03. Additional registration fee - Deposit in fund - Suspension of fee. At the time of registering a motor vehicle, the owner shall pay to the director of the department of transportation, in addition to the registration fees, a fee of one dollar for each motor vehicle registered. The fees must be deposited with the state treasurer who shall credit the fees to the unsatisfied judgment fund. If on June first of any year the amount of uncommitted money in the fund is ~~three hundred one~~ three hundred one hundred ~~fifty~~ fifty thousand dollars or more, the requirement for the payment of the fee is suspended during the succeeding year and until the year in which the fee is reimposed. The fee must be reimposed for any year whenever on June first of the previous year the uncommitted amount of the fund is less than ~~three hundred one~~ three hundred one hundred ~~fifty~~ fifty thousand dollars.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 33**SENATE BILL NO. 2011**

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

SECURITIES COMMISSIONER

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner for the purpose of defraying the expenses of the office of the securities commissioner, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|---------------|
| Salaries and wages | \$810,067 |
| Operating expenses | 259,174 |
| Equipment | <u>20,800</u> |
| Total general fund appropriation | \$1,090,041 |

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 34

SENATE BILL NO. 2012

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

HUMAN SERVICES

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to create and enact a new section to chapter 25-03.2, a new section to chapter 50-09, a new section to chapter 50-11, a new chapter to title 50, and a new section to chapter 50-24.4 of the North Dakota Century Code, relating to a moratorium on residential treatment center and residential child care facility beds, the children's health insurance program, the county share of foster care costs, and the limits on geropsychiatric nursing facilities; to amend and reenact section 25-03.1-04, subsection 3 of section 50-01.2-03.2, subsection 5 of section 50-24.4-10, and section 50-24.4-13 of the North Dakota Century Code, relating to public treatment facilities, human services financing in exceptional circumstances, operating cost limits for nursing homes, and to exceptions to case mix nursing home rates; to amend and reenact section 4 of chapter 561 of the 1991 Session Laws, as amended by section 18 of chapter 2 of the 1993 Session Laws, section 9 of chapter 34 of the 1995 Session Laws, and section 16 of chapter 12 of the 1997 Session Laws, relating to appropriation for projects at westwood park; to repeal section 25-04-20 of the North Dakota Century Code, relating to the westwood park assets management committee; to provide for the transfer of appropriations between agencies and institutions; to provide for reports to the budget section; to provide for a legislative council study; to provide legislative intent; to provide a contingent appropriation; to provide for land board distributions; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 their expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

| MANAGEMENT AND COUNCILS | |
|----------------------------------|---------------------|
| Salaries and wages | \$11,171,996 |
| Operating expenses | 39,431,599 |
| Equipment | 1,782,707 |
| Capital improvements | 493 |
| Grants | 1,055,889 |
| Loan fund - DD | 1,840,956 |
| Total all funds | <u>\$55,283,640</u> |
| Less estimated income | 40,478,356 |
| Total general fund appropriation | <u>\$14,805,284</u> |

Subdivision 2.

ECONOMIC ASSISTANCE

| | |
|----------------------------------|---------------|
| Salaries and wages | \$8,914,445 |
| Operating expenses | 11,855,427 |
| Equipment | 26,000 |
| Capital improvements | 2,543 |
| Grants - assistance payments | 118,748,623 |
| Grants - medical assistance | 668,673,150 |
| Total all funds | \$808,220,188 |
| Less estimated income | 612,275,533 |
| Total general fund appropriation | \$195,944,655 |

Subdivision 3.

PROGRAM AND POLICY

| | |
|----------------------------------|---------------|
| Salaries and wages | \$9,971,172 |
| Operating expenses | 12,561,478 |
| Equipment | 166,325 |
| Capital improvements | 1,619 |
| Grants | 125,218,183 |
| Total all funds | \$147,918,777 |
| Less estimated income | 110,838,978 |
| Total general fund appropriation | \$37,079,799 |

Subdivision 4.

NORTHWEST HUMAN SERVICE CENTER

| | |
|----------------------------------|-------------|
| Total all funds | \$7,656,098 |
| Less estimated income | 3,554,087 |
| Total general fund appropriation | \$4,102,011 |

NORTH CENTRAL HUMAN SERVICE CENTER

| | |
|----------------------------------|--------------|
| Total all funds | \$14,352,172 |
| Less estimated income | 7,030,328 |
| Total general fund appropriation | \$7,321,844 |

LAKE REGION HUMAN SERVICE CENTER

| | |
|----------------------------------|-------------|
| Total all funds | \$7,383,028 |
| Less estimated income | 3,086,833 |
| Total general fund appropriation | \$4,296,195 |

NORTHEAST HUMAN SERVICE CENTER

| | |
|----------------------------------|--------------|
| Total all funds | \$17,265,256 |
| Less estimated income | 10,589,332 |
| Total general fund appropriation | \$6,675,924 |

SOUTHEAST HUMAN SERVICE CENTER

| | |
|----------------------------------|--------------|
| Capital improvements | \$151,332 |
| Human service center operations | 18,485,400 |
| Total all funds | \$18,636,732 |
| Less estimated income | 10,922,681 |
| Total general fund appropriation | \$7,714,051 |

SOUTH CENTRAL HUMAN SERVICE CENTER

| | |
|----------------------------------|-------------|
| Total all funds | \$9,386,728 |
| Less estimated income | 4,341,654 |
| Total general fund appropriation | \$5,045,074 |

| WEST CENTRAL HUMAN SERVICE CENTER | |
|--|-------------------|
| Total all funds | \$17,918,416 |
| Less estimated income | <u>10,680,615</u> |
| Total general fund appropriation | \$7,237,801 |
| BADLANDS HUMAN SERVICE CENTER | |
| Total all funds | \$8,900,485 |
| Less estimated income | <u>4,626,639</u> |
| Total general fund appropriation | \$4,273,846 |
| STATE HOSPITAL | |
| Capital improvements | \$1,699,665 |
| Operations | <u>49,170,289</u> |
| Total all funds | \$50,869,954 |
| Less estimated income | <u>15,717,017</u> |
| Total general fund appropriation | \$35,152,937 |
| DEVELOPMENTAL CENTER | |
| Capital improvements | \$195,390 |
| Operations | <u>39,031,377</u> |
| Total all funds | \$39,226,767 |
| Less estimated income | <u>29,840,448</u> |
| Total general fund appropriation | \$9,386,319 |
| Total all funds - subdivision 4 | \$191,595,636 |
| Total estimated income - subdivision 4 | \$100,389,634 |
| Total general fund appropriation - subdivision 4 | \$91,206,002 |
| Grand total general fund appropriation section 1 | \$339,035,740 |
| Grand total special fund appropriation section 1 | \$863,982,501 |
| Grand total all funds section 1 | \$1,203,018,241 |

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 section 1 of this Act, may be expended 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, 1999, and ending June 30, 2001.

SECTION 3. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND. There may be expended by the department of human services, on or before June 1, 2001, from the cash balance of, any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of \$1,192,700, or so much of the sum as may be necessary, which is appropriated in section 1 of this Act.

SECTION 4. TRANSFER. Subject to the provisions of chapter 54-16, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 4 of section 1 of this Act.

SECTION 5. CORRELATION OF RESOURCES FOR DEPARTMENTAL CLIENTS. Notwithstanding section 4 of this Act, the director of the department of human services may transfer appropriation authority and authorized positions between agencies and institutions included within subdivision 4 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 institutions.

The transfers from human service centers require prior consultation with the regional human service center advisory boards.

SECTION 6. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT EMPLOYEES - REPORTS TO THE BUDGET SECTION AND THE LEGISLATIVE COUNCIL. It is the intent of the legislative assembly that the human service centers, the state hospital, and the developmental center report to the budget section and the legislative council, or its designee, on the hiring of any additional full-time equivalent positions in addition to those authorized by the legislative assembly in subdivision 4 of section 1 of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 7. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Voluntary Screening and admission to a public treatment facility. ~~Under rules adopted by the department, an application for screening and admission of an individual 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 these illnesses for mental illness or chemical dependency must be performed by a regional human service center. 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 these illnesses, by the~~ This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal guardian, custodian, or the individual requesting services, the regional human service center shall conduct a screening. ~~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 request, the regional human service center ~~must~~ shall arrange for ~~an evaluation~~ a screening of the ~~applicant~~ individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or ~~the~~ director shall immediately designate a physician, psychiatrist, psychologist, or mental health professional to examine the ~~patient~~ individual.

SECTION 8. A new section to chapter 25-03.2 of the North Dakota Century Code is created and enacted as follows:

Moratorium on expansion of residential treatment center for children bed capacity. Notwithstanding sections 25-03.2-03 and 25-03.2-08, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 1999.

SECTION 9. AMENDMENT. Subsection 3 of section 50-01.2-03.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~The~~ Notwithstanding any other provisions of law, the department shall seek appropriations for the purpose of providing additional financial assistance to reimburse county social service boards for human service program costs and local expenses of administering human service locally administered economic assistance programs in counties in which the presence of an Indian reservation substantially reduces the amount of property subject to taxation more than twenty percent of the caseload

for these programs consists of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The reimbursement must be such that:

- a. An affected county's expenses for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at one hundred percent;
- b. Each calendar year the affected counties will receive quarterly allocations based on the actual county expenses for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 57-13-07 available on that date;
- c. The reimbursement will be calculated for each county and reported to the county social service board prior to August first of the year preceding the allocation; and
- d. For calendar year 2000, up to fifteen percent of the social service block grant funds available to all counties during that calendar year or general fund equivalents of social service block grant funds must be used for part of this reimbursement. For the first six months of calendar year 2001, up to seven and one-half percent of the social service block grant funds available to all counties during that calendar year or general fund equivalents of social service block grant funds must be used for part of this reimbursement.

SECTION 10. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

County share of foster care costs.

1. For all periods after January 1, 1998, each county shall reimburse the state agency, upon claim being made therefor by the state agency, for that county's share of one-fourth of the amount expended in the state in excess of any amount provided by the federal government under title IV-E for payments on behalf of children approved and granted foster care for children or subsidized adoption, without regard to that child's eligibility for benefits under title IV-E.
2. Each county's share of all counties' shares must be calculated under a formula established by the state agency through consultation with county representatives. The formula must:
 - a. Include consideration of the most recent census data or official census estimates of the number of youth in each county;
 - b. Include consideration of recent expenditures for foster care for youth from each county; and
 - c. Be established by policy, and not by rule.

SECTION 11. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Moratorium on expansion of residential child care facility bed capacity. Notwithstanding sections 50-11-02 and 50-11-09, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility above the state's gross number of beds licensed as of June 30, 1999.

SECTION 12. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Children's health insurance program" means a program to provide health assistance to low-income children funded through title XXI of the federal Social Security Act [42 U.S.C. 1397aa, et seq.].
2. "County agency" means the county social service board.
3. "Department" means the department of human services.
4. "Plan" means the children's health insurance program state plan.
5. "Poverty line" means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2), applicable to a family of the size involved.

Duties of the department. The department shall:

1. Prepare, submit, and implement the plan that includes eligibility determinations for self-employed applicants based on the average of the previous three years of adjusted gross income, which means the adjusted gross income as computed for an individual for federal income tax purposes under the Internal Revenue Code;
2. Supervise the administration of the children's health insurance program throughout this state;
3. Take action, give directions, and adopt rules as may be necessary or desirable to carry out the provisions of this chapter;
4. After federal approval of the plan, apply for a federal waiver allowing plan coverage for a family through an employer-based insurance policy if an employer-based family insurance policy is more cost-effective than the traditional plan coverage for the children;
5. Report annually to the legislative council and describe enrollment statistics and costs associated with the plan;
6. Reimburse counties for expenses incurred in the administration of the children's health insurance program at rates based upon all counties' total administrative costs; and
7. Administer all funds appropriated or made available to the department for the purpose of carrying out the provisions of this chapter.

Duties of county agency. In the administration of the plan, unless the department otherwise establishes eligibility, the county agency shall:

1. Administer the plan under the direction and supervision of the department; and
2. Make an investigation and record the circumstances of each applicant, obtaining information as may be required by the department.

Plan requirements. The plan:

1. Must be provided through private contracts with insurance carriers;
2. Must allow conversion to another health insurance policy;
3. Must be based on an actuarial equivalent of a benchmark plan;
4. Must incorporate every state-required waiver approved by the federal government;
5. Must include community-based eligibility outreach services; and
6. Must provide:
 - a. An income eligibility limit of one hundred forty percent of the poverty line;
 - b. A copayment requirement for each pharmaceutical prescription and for each emergency room visit;
 - c. A deductible for each inpatient hospital visit;
 - d. Coverage for:
 - (1) Inpatient hospital, medical, and surgical services;
 - (2) Outpatient hospital and medical services;
 - (3) Psychiatric and substance abuse services;
 - (4) Prescription medications;
 - (5) Preventive screening services;
 - (6) Preventive dental and vision services; and
 - (7) Prenatal services; and
 - e. A coverage effective date that is the first day of the month, following the date of application and determination of eligibility.

Limitations of chapter. Health assistance provided under this chapter is not an entitlement. A person does not have a property interest in any health assistance sought or provided under this chapter. If the department estimates that available funds are insufficient to allow participation by additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds, including denying applications and establishing waiting lists, that is not forbidden by title XXI of the federal Social Security Act [42 U.S.C. 1397aa, et seq.] or regulations adopted thereunder. If federal children's health insurance program

funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding, notwithstanding any other provisions of this chapter.

SECTION 13. AMENDMENT. Subsection 5 of section 50-24.4-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The department shall establish a composite index or indices ~~by determining the appropriate economic change indicators~~ based on the average of the increase in the Data Resources, Incorporated, nursing home input price index and the increase in the consumer price index for all urban wage earners and clerical workers (all items, United States city average) to be applied to specific operating cost categories or combination of operating cost categories.

SECTION 14. AMENDMENT. Section 50-24.4-13 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-13. Exclusion. Until procedures for determining operating cost payment rates according to mix of resident needs are established for nursing homes that exclusively provide residential services for ~~the nongeriatric physically handicapped~~ individuals with physical disabilities or units within nursing homes which exclusively provide geropsychiatric services, such nursing homes or units within nursing homes may not be included in the calculation of the percentiles of any group. Each of these nursing homes or units within nursing homes shall receive ~~their~~ its actual allowed historical operating cost per diem adjusted by a percentage amount equal to the increase, if any, in the national or state economic change index, made available under section 50-24.4-10, and which the department determines to be relevant to residential services for ~~the nongeriatric physically handicapped~~ individuals with physical disabilities or geropsychiatric services.

SECTION 15. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Limits on geropsychiatric facilities. The number of units within nursing homes which exclusively provide geropsychiatric services may not exceed one, and admission to a nursing home which exclusively provides geropsychiatric services may only be granted after the state hospital has performed an evaluation of the individual being admitted. After a geropsychiatric unit has been established within a nursing home, the state hospital may not offer geropsychiatric services through a separate geropsychiatric unit.

SECTION 16. AMENDMENT. Section 4 of chapter 561 of the 1991 Session Laws as amended by section 18 of chapter 2 of the 1993 Session Laws, by section 9 of chapter 34 of the 1995 Session Laws, and by section 16 of chapter 12 of the 1997 Session Laws is amended and reenacted as follows:

SECTION 4. PROCEEDS - APPROPRIATION. The proceeds from the sale of land, property, and equipment at westwood park 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 westwood park for the period beginning July 1, 1991, and ending June 30, ~~1999~~ 2001.

SECTION 17. LEGISLATIVE INTENT - BASIC CARE RATES. It is the intent of the legislative assembly that rates effective July 1, 1999, and July 1, 2000, for basic care facilities include a three percent operating margin on direct care costs and include property costs as pass-through costs, not subject to limitations. The department may adopt interim final rules without a finding that emergency rulemaking is necessary to implement this intent. Any interim final rules so adopted may take effect on a date no earlier than the date of first filing with the legislative council of the notice of proposed adoption of a rule.

SECTION 18. NORTHEAST HUMAN SERVICE CENTER BUDGET SAVINGS - BUDGET SECTION REPORT. The department of human services shall identify savings in the budget to be requested for the northeast human service center for the 2001-03 biennium totaling five hundred thousand dollars from the general fund through efficiencies and related to the collocation of service delivery. The department of human services shall present a report regarding the planned reductions to the budget section prior to the submission of the department's budget request for the 2001-03 biennium.

SECTION 19. TRADITIONAL MEDICAID GRANTS - BUDGET SECTION APPROVAL. The department of human services shall periodically report to the budget section regarding the status of funding for traditional medicaid grants and receive prior budget section approval before exceeding the amount appropriated for traditional medicaid grants during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 20. LEGISLATIVE COUNCIL STUDY - HUMAN SERVICE CENTER SERVICES - SERIOUSLY MENTALLY ILL. The legislative council shall consider studying during the 1999-2000 interim community services provided for the seriously mentally ill including human service center services and the number of clients served.

SECTION 21. LEGISLATIVE COUNCIL STUDY - OPTIONAL MEDICAID SERVICES. The legislative council shall consider studying during the 1999-2000 interim the services provided by the state in its medical assistance program, including optional medical assistance services and the impact to the state and its citizens of providing those services.

SECTION 22. LEGISLATIVE COUNCIL STUDY - RESIDENTIAL TREATMENT CENTERS AND RESIDENTIAL CHILD CARE FACILITIES. The legislative council shall consider studying during the 1999-2000 interim residential treatment centers and residential child care facilities, including occupancy rates, the number of out-of-state residents, and the need for additional facilities.

SECTION 23. LEGISLATIVE INTENT - MEDICAL ASSISTANCE - CERTIFIED NURSE MIDWIVES. It is the intent of the legislative assembly that the department of human services reimburse through the medical assistance program certified nurse midwives at a rate of at least eighty-five percent of the fee paid physicians for the same service.

SECTION 24. LEGISLATIVE INTENT - SOCIAL SERVICES BLOCK GRANT FUNDING. It is the intent of the legislative assembly that the department of human services in presenting the department's budget request for the 2001-03 biennium to the fifty-seventh legislative assembly identify the use of social services block grant funds, including information on any proposed federal changes in the block grant funding, and identify specific areas where an appropriation from the state general fund is requested to replace reduced social services block grant funds.

SECTION 25. LEGISLATIVE INTENT - DEPARTMENT OF HUMAN SERVICES PROGRAMS - PROGRAM EFFICIENCIES - APPROPRIATE USE OF FEDERAL FUNDS - REPORTS TO THE LEGISLATIVE COUNCIL. It is the intent of the legislative assembly that the department of human services review departmental program funding issues during the 1999-2000 interim, including the appropriateness of maximizing the use of federal funds, the opportunities to reduce general fund program expenditures, the appropriate methods to provide detailed justification prior to the expansion of programs, the appropriateness of the state replacing reductions in federal funds with state resources, the coordination of programs to avoid duplication in program delivery, and the cost/benefit of programs. The department of human services shall report its findings and recommendations as a result of reviewing these issues to the legislative council, or an appropriate committee of the legislative council during the 1999-2000 interim.

SECTION 26. LEGISLATIVE INTENT - NURSING HOME LIMITATIONS - BUDGET SECTION APPROVAL. It is the intent of the legislative assembly that the department of human services not reduce the nursing home limitations for direct, other direct, and indirect cost categories from the levels anticipated in the executive budget and contained in section 1 of this Act during the biennium beginning July 1, 1999, and ending June 30, 2001, unless receiving prior budget section approval.

SECTION 27. LEGISLATIVE INTENT - WAGE INCREASES FOR DIRECT CONTACT AND PROFESSIONAL STAFF OF COMMUNITY DEVELOPMENTAL DISABILITIES PROVIDER AGENCIES. It is the intent of the legislative assembly that funding increases provided community developmental disabilities provider agencies in subdivision 2 of section 1 of this Act specifically for salaries and wages adjustments be allocated by the department of human services specifically to the salaries and wages line item for the individual provider agencies and those funds be used only for that purpose by the provider agencies.

SECTION 28. LEGISLATIVE COUNCIL STUDY - HUMAN SERVICE CENTER SERVICES. The legislative council shall consider studying during the 1999-2000 interim the services provided by human service centers, including the appropriateness of and justification for continuing human service center programs, the cost/benefit of human service programs, methods for evaluating the effectiveness and outcomes of human service center programs, and the need to establish priorities relating to human service center programs.

SECTION 29. LEGISLATIVE COUNCIL STUDY - NURSING HOME REGULATIONS - IMPACT ON COST OF CARE. The legislative council shall consider studying during the 1999-2000 interim the state and federal regulations relating to nursing homes, the impact of those regulations on the cost of care at North Dakota nursing homes, and state options for reducing regulations and the related reductions in cost of care.

SECTION 30. LEGISLATIVE COUNCIL STUDY - NURSING HOME RATE EQUALIZATION. The legislative council shall consider studying during the 1999-2000 interim the appropriateness of the state continuing rate equalization for private pay and public pay residents in nursing homes, including the fiscal impact on private pay and public pay residents of the repeal of rate equalization.

SECTION 31. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 1999-2000 interim, the feasibility and desirability of collocating the developmental center and the state hospital at one location and the feasibility and desirability of transferring additional buildings on the state hospital grounds to the department of corrections and rehabilitation.

SECTION 32. ALCOHOL AND DRUG EDUCATION PROGRAM - EXPENDITURE - LIMITATIONS. The moneys appropriated in the grants line item in subdivision 3 of section 1 of this Act for the native American youth alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program. The local grant recipient is required to provide match equal to the grant amount with funding or in-kind service.

SECTION 33. ESTIMATED INCOME. The estimated income line item in subdivision 3 of section 1 of this Act includes the sum of \$200,000, or much of the sum as may be necessary, from the children's services coordinating committee for the purpose of defraying the expenses related to the native American youth alcohol and drug abuse education program.

SECTION 34. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES - NETWORK TECHNICAL SUPPORT. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much of the sum as may be necessary, and federal funds of \$50,000 to the department of human services for the purpose of providing network technical support to county social service boards, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 35. CONTINGENT APPROPRIATION - TRAUMATIC BRAIN-INJURED FACILITY. There is hereby appropriated a total of \$200,000, including \$140,000 of federal funds and \$60,000 from the general fund in the state treasury, not otherwise appropriated, or so much of the funds as may be necessary, for the biennium beginning July 1, 1999, and ending June 30, 2001. This money may be spent by the department of human services only if additional beds for traumatic brain-injured persons are established in western North Dakota and after receiving emergency commission and budget section approval.

SECTION 36. LEGISLATIVE INTENT - COMPREHENSIVE CHILD WELFARE INFORMATION AND PAYMENT SYSTEM. It is the intent of the legislative assembly that the funding provided in subdivision 1 of section 1 of this Act for the comprehensive child welfare information and payment system is for the completion of the project during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 37. CONTINGENT GENERAL FUND APPROPRIATION - SPED PROGRAM. The estimated income line item in subdivision 3 of section 1 of this bill includes \$4,262,410 from special funds derived from the health care trust fund created pursuant to Senate Bill No. 2168. In the event that moneys in the health care trust fund are less than anticipated resulting in a reduction of funds available for the SPED program there is hereby appropriated up to \$4,262,410, or so much of the funds as may be necessary, from the general fund in the state treasury, not otherwise appropriated, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 38. LAND BOARD DISTRIBUTIONS. Notwithstanding the provisions of section 15-03-05.2, during the 1999-2001 biennium, the board of university and school lands shall distribute to the state hospital all income from a permanent fund managed for this institution.

SECTION 39. REPEAL. Section 25-04-20 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 40. EFFECTIVE DATE. Section 9 of this Act becomes effective on January 1, 2000, and section 12 of this Act becomes effective on October 1, 1999.

SECTION 41. EXPIRATION DATE. Sections 8 and 11 of this Act are effective through June 30, 2001, and after that date are ineffective.

SECTION 42. EMERGENCY. The appropriation contained in subdivision 4 of section 1 of this Act for the state hospital includes \$1,050,000 from the general fund to replace a boiler, which is declared to be an emergency measure and those funds are available immediately upon filing of this Act with the secretary of state. Section 17 of this Act is declared to be an emergency measure.

Approved April 23, 1999
Filed April 23, 1999

CHAPTER 35

SENATE BILL NO. 2013

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

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 for a legislative council study; to amend and reenact sections 15-21-02 and 15-21-03 of the North Dakota Century Code or in the alternative to amend and reenact sections 15.1-02-02 and 15.1-02-03 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction and the appointment of a deputy superintendent; and to amend and reenact sections 15-59-06, 15-59-06.2, 15-59-07, 44-03-01, and 54-44.1-12 of the North Dakota Century Code, relating to special education, the appointment of deputies, and executive budget allotments.

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 public instruction, the school for the deaf, the school for the blind, and the state library for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

| | |
|--|--------------------|
| Salaries and wages | \$11,152,952 |
| Operating expenses | 9,809,720 |
| Equipment | 491,036 |
| Grants - Foundation aid and transportation | 479,006,259 |
| Grants - Revenue supplement payments | 3,100,000 |
| Grants - Tuition apportionment | 53,528,217 |
| Grants - Special education | 46,600,000 |
| Grants - Other grants | 143,318,663 |
| Geographic education | 50,000 |
| SENDIT network | 546,669 |
| National board certification | 20,000 |
| Total all funds | \$747,623,516 |
| Less estimated income | <u>204,137,871</u> |
| Total general fund appropriation | \$543,485,645 |

Subdivision 2.

STATE LIBRARY

| | |
|--------------------|------------------|
| Salaries and wages | \$1,953,203 |
| Operating expenses | 1,109,782 |
| Equipment | 40,000 |
| Grants | <u>1,453,745</u> |
| Total all funds | \$4,556,730 |

| | |
|----------------------------------|------------------|
| Less estimated income | <u>1,593,819</u> |
| Total general fund appropriation | \$2,962,911 |

Subdivision 3.

SCHOOL FOR THE DEAF

| | |
|----------------------------------|----------------|
| Salaries and wages | \$4,275,930 |
| Operating expenses | 1,015,458 |
| Equipment | 74,824 |
| Capital improvements | <u>36,327</u> |
| Total all funds | \$5,402,539 |
| Less estimated income | <u>720,903</u> |
| Total general fund appropriation | \$4,681,636 |

Subdivision 4.

SCHOOL FOR THE BLIND

| | |
|---|------------------|
| Salaries and wages | \$2,391,456 |
| Operating expenses | 678,059 |
| Equipment | 70,500 |
| Capital improvements | <u>51,790</u> |
| Total all funds | \$3,191,805 |
| Less estimated income | <u>1,002,577</u> |
| Total general fund appropriation | \$2,189,228 |
| Grand total general fund appropriation S.B. 2013 | \$553,319,420 |
| Grand total special funds appropriation S.B. 2013 | \$207,455,170 |
| Grand total all funds appropriation S.B. 2013 | \$760,774,590 |

SECTION 2. APPROPRIATION - TUITION APPORTIONMENT. The sum of \$53,528,217, 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, are hereby appropriated to the department of public instruction 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, 1999, and ending June 30, 2001.

SECTION 3. EXPENDITURE AUTHORITY. The superintendent of public instruction may expend funds appropriated in the grants - foundation aid and transportation and grants - special education line items in subdivision 1 of section 1 of this Act in payment of grants for education services that were due in the 1997-99 biennium but which were not filed, claimed, or properly supported by the education provider in question until after June 30, 1999.

SECTION 4. NATIONAL BOARD CERTIFICATION. The national board certification line item in subdivision 1 of section 1 of this Act must be distributed by the department of public instruction to the education standards and practices board to pay one-half of the application fee required to be remitted to the national board for professional teaching standards for each applicant from this state taking the national board examination.

SECTION 5. DISTRIBUTION OF SPECIAL EDUCATION AID. The grants - special education line item in subdivision 1 of section 1 of this Act must be distributed as follows:

1. Eleven million five hundred thousand dollars to reimburse school districts or special education units for excess costs incurred relating to contracts for students with disabilities and for boarding care

reimbursements, as provided in sections 15-40.2-08, 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2. Of this amount, \$5,500,000 must be distributed during the fiscal year ending June 30, 2000, and \$6,000,000 must be distributed during the fiscal year ending June 30, 2001. Any funds remaining after distributions pursuant to sections 15-40.2-08, 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2 for either year must be distributed to school districts and special education units to proportionately reduce school district and special education unit liability for costs in excess of 2.5 times the state average per student cost, as provided in sections 15-59-06, 15-59-06.2, 15-59-07, and 15-59-07.2.

2. Four hundred thousand dollars to reimburse school districts or special education units for gifted and talented programs upon the submission of an application that is approved in accordance with guidelines adopted by the superintendent of public instruction. The superintendent of public instruction shall encourage cooperative efforts for gifted and talented programs among school districts and special education units.
3. Any amount remaining in the grants - special education line item must be distributed on a per student basis as required by section 15-40.1-07.6, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. State special education payments distributed as required by section 15-40.1-07.6 must be reduced by the amount of matching funds required to be paid by school districts or special education units for students participating in the medicaid program. Special education funds equal to the amount of the matching funds required to be paid by the school district or special education unit must be paid by the superintendent of public instruction to the department of human services on behalf of the school district or unit.

SECTION 6. TECHNOLOGY GRANTS. The grants - other grants line item in subdivision 1 of section 1 of this Act includes \$6,000,000 from the state general fund for grants to schools for technology or teacher professional development related expenditures. The educational telecommunications council shall determine the maximum amount to which each school district is entitled by dividing the number of elementary and secondary students in average daily membership in this state into the amount appropriated from the state general fund in subdivision 1 of section 1 of this Act for technology grants and then multiplying the result by the number of students in average daily membership in each district. Prior to the distribution of grants pursuant to this section, the educational telecommunications council may establish a minimum grant amount of \$5,000. A school district is not eligible to receive a grant under this section unless the administrative office of the district is connected to the internet.

SECTION 7. PAYMENTS FOR LIMITED ENGLISH PROFICIENT STUDENTS. The grants - foundation aid and transportation line item in subdivision 1 of section 1 of this Act includes up to \$400,000 from the state general fund which, pursuant to section 15-40.1-07.7, must be distributed to school districts educating limited English proficient students.

SECTION 8. INDIRECT COST ALLOCATION. Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

SECTION 9. 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, 1999, and ending June 30, 2001.

SECTION 10. GRANTS. The grants line item in subdivision 2 of section 1 of this Act includes \$888,745 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 2000.

SECTION 11. FEES DEPOSITED IN OPERATING FUND. Any moneys included in the estimated income line item in subdivision 4 of section 1 of this Act, collected for subscription fees or braille fees, must be deposited in the school for the blind operating fund in the state treasury and may be spent subject to appropriation by the legislative assembly.

SECTION 12. EXEMPTION. The operating expenses line item in subdivision 1 of section 1 of chapter 13 of the 1997 Session Laws includes up to \$70,400 from the state general fund which is not subject to the provisions of section 54-44.1-11 and may be used for continued operating costs for the accreditation program during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 13. RED RIVER VALLEY WRITING PROJECT. The operating expenses line item in subdivision 1 of section 1 of this Act includes \$10,000 from the state general fund which must be used to support the Red River Valley writing project.

SECTION 14. FUNDING FOR LEADERSHIP IN EDUCATIONAL ADMINISTRATION DEVELOPMENT CONSORTIUM AND TEACHER CENTER NETWORK. The grants - other grants line item in subdivision 1 of section 1 of this Act includes \$200,000 from the state general fund for grants to the leadership in educational administration development consortium and \$210,000 from the state general fund for grants to the teacher center network.

SECTION 15. LEGISLATIVE INTENT - LEADERSHIP IN EDUCATIONAL ADMINISTRATION DEVELOPMENT CONSORTIUM AND TEACHER CENTER NETWORK - COOPERATIVE PROGRAMS. It is the intent of the fifty-sixth legislative assembly that to the extent possible, the leadership in educational administration development consortium and the teacher center network work cooperatively to improve the development and delivery of programs and services to educational administrators and teachers.

SECTION 16. LEGISLATIVE INTENT - ELECTRONIC ACCESS TO DEPARTMENT OF PUBLIC INSTRUCTION PUBLICATIONS - SCHOOL DISTRICT ELECTRONIC REPORTING. It is the intent of the fifty-sixth legislative assembly that to reduce printing and mailing costs incurred by the department of public instruction and to provide additional access to information, by July 1, 2000, the department shall, to the extent possible, provide electronic access to all publications and other documents produced by the department for distribution to school districts and shall reduce the number of publications and documents printed and distributed by mail. It is the intent of the fifty-sixth legislative assembly that to reduce mailing costs incurred by school districts and to increase the efficiency of communications between school districts and the department of public instruction, by July 1, 2001, school districts shall, to the extent possible, electronically prepare and transfer all reports and information required to be submitted to the department of public instruction.

SECTION 17. CREDENTIALING PROCESS FOR SPECIAL EDUCATION TEACHERS. The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on March 1, 1999, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the change prior to July 1, 2001.

SECTION 18. SCHOOL DISTRICT FINANCIAL DATA - REPORTING - REQUIREMENTS. The superintendent of public instruction shall develop standardized reporting forms, in both hard copy and electronic format, prescribing the manner in which school district superintendents and business managers must account for and report financial data. The superintendent of public instruction shall report to the interim education finance committee of the legislative council regarding the content of the reports and specific actions taken to account for transfers from school district general funds, to eliminate or reduce variations in the reporting of data, and to ensure that the financial data is available in a form that allows for accurate and consistent comparisons.

SECTION 19. NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS TESTING. The department of public instruction shall participate in the national assessment of educational progress (NAEP) testing program for the 1999-2001 biennium.

SECTION 20. FEDERAL FUNDING FOR SPECIAL EDUCATION URGED. The fifty-sixth legislative assembly urges the Congress of the United States and the President to increase federal funding for special education to achieve, within the next three years, the statutory goal of the federal government providing funding for special education students equal to 40 percent of the national average per student educational expenditure. The secretary of state shall send copies of this section to the President, the members of the North Dakota congressional delegation, the national conference of state legislatures, and the state superintendent of public instruction.

SECTION 21. LAND BOARD DISTRIBUTIONS. Notwithstanding the provisions of section 15-03-05.2, during the 1999-2001 biennium, the board of university and school lands shall distribute to the school for the deaf and the school for the blind all income from permanent funds managed for the benefit of those institutions.

SECTION 22. LEGISLATIVE COUNCIL STUDY - DIVISION OF INDEPENDENT STUDY. The legislative council shall consider studying, during the 1999-2001 interim, the role, mission, operation, and privatization of the division of independent study, including educational services provided by the division to out-of-state students. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 23. LEGISLATIVE INTENT - POSITION TRANSFERS - DIVISION OF INDEPENDENT STUDY. It is the intent of the fifty-sixth legislative assembly that

for the 1999-2001 biennium, the department of public instruction be authorized to have no more than 131.95 full-time equivalent positions and that no more than 38.7 of these positions be in the division of independent study. It is the intent of the fifty-sixth legislative assembly that if, during the 1999-2001 biennium, the superintendent of public instruction transfers any positions to the division of independent study from other divisions of the department of public instruction, the transfers be reported to the budget section of the legislative council at its next meeting.

SECTION 24. CLASS SIZE REDUCTION GRANTS - REPORT TO BUDGET SECTION. During the 1999-2001 biennium, the department of public instruction shall present a report to the budget section on the distribution of federal class size reduction initiative grants.

SECTION 25. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-21-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~fifty-six~~ fifty-nine thousand ~~five~~ four hundred ~~sixty-eight~~ thirty-seven dollars through June 30, ~~1998~~ 2000, ~~sixty thousand six hundred twenty-six~~ sixty thousand six hundred twenty-six dollars through December 31, 2000, and ~~fifty-eight~~ sixty-seven thousand ~~two~~ six hundred ~~seventy-two~~ nineteen dollars thereafter. The superintendent is also entitled to reimbursement for expenses incurred in the discharge of official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

SECTION 26. AMENDMENT. Section 15.1-02-02 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-six legislative assembly, is amended and reenacted as follows:

15.1-02-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~fifty-eight~~ fifty-nine thousand ~~two~~ four hundred ~~seventy-two~~ thirty-seven dollars through June 30, 2000, ~~sixty thousand six hundred twenty-six~~ sixty thousand six hundred twenty-six dollars through December 31, 2000, and sixty-seven thousand six hundred nineteen dollars thereafter.

SECTION 27. AMENDMENT. If House Bill No. 1034 does not become effective, Section 15-21-03 of the North Dakota Century Code is amended and reenacted as follows:

15-21-03. Appointment of deputy - Assistant assistant - Clerks. The superintendent of public instruction may appoint a ~~deputy for whose official acts he is responsible, and~~ an assistant whose duty it is to assist the superintendent of public instruction in visiting schools and institutes, to attend school officers' meetings, and to perform such other duties as may be required of him. The superintendent also may employ such clerks as are necessary in carrying on the work of the department.

⁹ **SECTION 28. AMENDMENT.** Section 15.1-02-03 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-02-03. Appointment of ~~deputy~~ assistant - Employment of personnel. The superintendent of public instruction may appoint a ~~deputy superintendent and~~ an assistant. The superintendent may also hire personnel or contract with other persons to perform the work of the department of public instruction.

SECTION 29. AMENDMENT. Section 15-59-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-06. State cooperation in special education. Students with disabilities who are receiving special education services must be deemed to be regularly enrolled in the school district of residence and must be included in the determination of payments from the state foundation aid program whether or not the students regularly attend school in the school or school district receiving the payments. A prorated state foundation aid payment for a student to attend a public school program for students with disabilities, approved by the superintendent of public instruction, may be made if the individualized education program for the student is written during the last quarter of the school term and specifically requires that the student attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who attends a public school special education program, payments must be made to the appropriate public school district for the portion of a normal schoolday the student participates in special education. For the purposes of this section, a normal schoolday consists of six hours. The amount the school district is required to expend must be reduced proportionately if a student attends the school for less than an entire year. If any school district within a special education unit has a student with disabilities who, in the opinion of the student's multidisciplinary team, is unable to attend the public schools in the special education unit because of a disability, the school district shall contract with an in-state public school located outside the special education unit in which the student is a legal resident, if the school will accept the student and has proper services for the student's education. No school district may enter into a contract with any in-state public school for the education of any student because of a disability, unless the services provided by the school and the contract have been approved in advance by the superintendent of public instruction. The contract must provide that the school district agrees to pay to the in-state public school as part of the cost of educating the student an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment. The payment may not exceed the actual per student cost incurred by the 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 payments to the district of residence an amount equal to the unpaid tuition until ~~the tuition due~~ that amount has been paid. The transportation must be furnished as provided by rules of the superintendent of public instruction. The

⁹ Section 15.1-02-03 was created by section 2 of House Bill No. 1034, chapter 196.

superintendent of public instruction shall reimburse school districts eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits ~~must be paid from funds~~, within the limits of legislative appropriations for that purpose.

SECTION 30. AMENDMENT. Section 15-59-06.2 of 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 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 per student~~ elementary or high school cost, depending on whether the enrollment would be in a grade or high school department, and twenty percent of all remaining costs. 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 eighty~~ percent of the remainder of the cost of education and related services for each such student with disabilities within the limits of legislative appropriations for that purpose.

SECTION 31. AMENDMENT. Section 15-59-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-59-07. Contracts for students with disabilities to attend private or out-of-state public schools. If any school district in this state has a student with disabilities who in the opinion of the student's multidisciplinary team is unable to attend the public schools in the district because of a physical or mental disability or because of a learning disability, the school district shall contract with any accredited private nonsectarian nonprofit corporation within or outside the state or an out-of-state public school which has proper facilities for the education of the student, if there is no public school in the state which has the necessary services and which will accept the student. No school district may enter a contract with any private nonsectarian nonprofit corporation or out-of-state public school for the education of any student having a physical or learning disability, unless the services provided by the school and the contract have been approved in advance by the superintendent of public instruction. The contract must provide that the 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 the student an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment and twenty percent of all remaining costs. The payment may not exceed the actual per student cost incurred by the private nonsectarian nonprofit corporation or out-of-state public school. The transportation must be furnished and reimbursed as provided by rules of the superintendent of public instruction. ~~The remainder of the actual cost of educating the student with disabilities not covered by other payments or credits must be paid from funds appropriated by the legislative assembly for special education notwithstanding limitations cited in section 15-59-06.~~ The superintendent of public instruction shall reimburse school districts eighty percent of the remainder of the actual cost of educating each student with disabilities not covered by other payments or credits within the limits of legislative appropriations for that purpose. The district of residence is entitled to the per student foundation payment.

¹⁰ **SECTION 32. AMENDMENT.** Section 44-03-01 of the North Dakota Century Code is amended and reenacted as follows:

44-03-01. Deputies may be appointed by certain officers. The secretary of state, state auditor, state treasurer, ~~superintendent of public instruction,~~ commissioner of insurance, commissioner of agriculture, commissioner of labor, district assessor, and city assessor each may appoint a deputy for whose acts as such ~~he~~ the officer shall be responsible. Each officer required to give a bond may require a bond from any deputy appointed by ~~him~~ the officer. Any such bond must be in the penal sum of not more than half the penal sum of the appointing officer's own bond and may be retained by the officer for ~~his~~ the officer's own protection. Such appointment must be in writing and is revocable in writing at the pleasure of the principal, and such appointment and revocation must be filed as the bond and oath of the principal are filed.

SECTION 33. AMENDMENT. Section 54-44.1-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.1-12. Control over rate of expenditures. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis, except that appropriations to the department of public instruction for foundation aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:
 - a. Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and

¹⁰ Section 44-03-01 was also amended by section 14 of Senate Bill No. 2360, chapter 113.

- b. Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

Approved April 19, 1999

Filed April 19, 1999

CHAPTER 36**SENATE BILL NO. 2014**

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

COMMITTEE ON PROTECTION AND ADVOCACY

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are 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 committee on protection and advocacy for the purpose of defraying the expenses of protection and advocacy services, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|------------------|
| Total all funds | \$2,238,136 |
| Less estimated income | <u>1,507,492</u> |
| Total general fund appropriation | \$730,644 |

Approved April 13, 1999

Filed April 14, 1999

CHAPTER 37

SENATE BILL NO. 2015 (Appropriations Committee) (At the request of the Governor)

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 other appropriations; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide statements of legislative intent; to provide for a legislative council study; to create and enact a new section to chapter 54-06, a new section to chapter 54-11, a new section to chapter 54-23.2, five new sections to chapter 57-34, and a new section to chapter 65-02 of the North Dakota Century Code, relating to the collection and receipt of public funds, mobile data terminal and 911 service fees, the audit and assessment of telecommunications carriers, deficiency notice protest and appeal procedure, claim for credit or refund of the tax on telecommunications carriers, preservation of records, and resale certificates, and payments in lieu of taxes on workers compensation bureau property; to amend and reenact subsection 2 of section 4-14.1-07, section 15-39.1-26, subsection 2 of section 32-12.2-07, sections 34-15-07, 39-12-20, subdivision g of subsection 3 of section 49-23-04, sections 54-16-04.1, 54-16-04.2, 54-27.2-02, 54-44-04.6, 57-34-01, 57-34-02, 57-34-03, 57-34-06, and 57-34-10 of the North Dakota Century Code, relating to ethanol plants, the collection, investment, and deposit of state funds, time periods under the one-call excavation notice system, the risk management fund, emergency commission approvals, the budget stabilization fund, and telecommunications carriers gross receipts tax revenues; to provide a penalty; to provide a continuing appropriation; to provide an effective date; to provide an expiration date; to provide for retroactive application; and to provide for application.

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, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

| | |
|--------------------------------|------------------|
| Administration | \$2,982,026 |
| Fiscal management | 3,875,828 |
| Facility management | 8,074,694 |
| Central personnel | 1,212,300 |
| Division of community services | 42,035,197 |
| Risk management | 959,911 |
| Statewide compensation plan | <u>5,400,000</u> |

| | |
|----------------------------------|-------------------|
| Total all funds | \$64,539,956 |
| Less estimated income | <u>46,088,243</u> |
| Total general fund appropriation | \$18,451,713 |

Subdivision 2.

INFORMATION SERVICES DIVISION

| | |
|----------------------------------|-------------------|
| Information resource management | \$49,659,295 |
| Total all funds | \$49,659,295 |
| Less estimated income | <u>49,409,295</u> |
| Total general fund appropriation | \$250,000 |

Subdivision 3.

CENTRAL SERVICES

| | |
|----------------------------------|------------------|
| Central services | \$5,454,471 |
| Total all funds | \$5,454,471 |
| Less estimated income | <u>4,774,332</u> |
| Total general fund appropriation | \$680,139 |

Subdivision 4.

STATE RADIO COMMUNICATIONS

| | |
|---|------------------|
| Salaries and wages | \$2,468,120 |
| Operating expenses | <u>1,788,580</u> |
| Equipment | <u>160,000</u> |
| Total all funds | \$4,416,700 |
| Less estimated income | <u>514,990</u> |
| Total general fund appropriation | \$3,901,710 |
| Grand total general fund appropriation section 1 | \$23,283,562 |
| Grand total special funds appropriation section 1 | \$100,786,860 |
| Grand total all funds appropriation section 1 | \$124,070,422 |

SECTION 2. APPROPRIATION. There is hereby appropriated from federal funds \$6,000,000, or so much of the sum as may be necessary, to the director of the office of management and budget for the division of community services for flood-related disasters and the weatherization of low-income homes, for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$360,000, or so much of the sum as may be necessary, to the emergency commission for the purpose of paying costs associated with Americans with Disabilities Act litigation to which the department of transportation is a party for the biennium beginning July 1, 1999, and ending June 30, 2001. The emergency commission may use the funds to make payments to the plaintiffs in the event a judgement is entered against the state in Miller v. State of North Dakota.

SECTION 4. APPROPRIATION - UNIVERSITY SYSTEM - GRANT TO PRAIRIE PUBLIC BROADCASTING. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$415,000, or so much of the sum as may be necessary, to the university system office for the purpose of providing a grant to be used as matching funds by prairie public broadcasting for phase I of the project to convert to digital television broadcasting.

SECTION 5. ATTORNEY GENERAL - GAMING ENFORCEMENT GRANTS - LINE ITEM TRANSFERS. Notwithstanding section 54-16-04 and section 5 of Senate Bill No. 2003, as approved by the fifty-sixth legislative assembly, the

emergency commission may authorize the attorney general to make transfers between the line items in section 1 of Senate Bill No. 2003 of up to the sum of \$310,086 for the purpose of providing additional local gaming enforcement grants in accordance with the provisions of section 6 of Senate Bill No. 2003, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. APPROPRIATION. The amount of \$25,000, or so much of that amount as may be necessary, is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the council on the arts for the purpose of providing a grant to the plains art museum for the Lewis and Clark bicentennial event, for the biennium beginning July 1, 1999, and ending June 30, 2001. The council on the arts may provide the grant only after the plains art museum has raised \$25,000 of other funds to be used to match the general fund moneys appropriated in this section.

SECTION 7. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the director of the office of management and budget may transfer between various line items in subdivisions 1, 2, and 3 of section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 8. CAPITOL BUILDING FUND. The amount of \$225,000, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of 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, 1999, and ending June 30, 2001. The amount of \$25,000, or so much of the sum as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is to be spent by the administration division from the capitol building fund for capitol grounds planning during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 9. EXEMPTION. The fiscal management appropriation contained in subdivision 1 of section 1 of chapter 15 of the 1997 Session Laws is not subject to the provisions of section 54-44.1-11 for up to an amount of \$750,000 and any unexpended funds from this appropriation are available for continued development and operating costs of the accounting, management, and payroll systems during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 10. SPECIAL COMPENSATION ADJUSTMENTS FOR CLASSIFIED STATE EMPLOYEES. It is the intent of the fifty-sixth legislative assembly that the statewide compensation plan appropriation included in subdivision 1 of section 1 of this Act be used for market equity compensation adjustments for classified state employees. The special market equity adjustments are to begin with the month of July 1999, to be paid in August 1999. The special market equity adjustments are to be independent of any general salary increase provided by this legislative assembly.

The special market equity increases are to be prioritized based on equity for employees whose salaries are furthest from their respective salary range midpoints effective July 1, 1999. Special market equity increases may not be given to employees whose salary exceeds the midpoints of their assigned salary range effective July 1, 1999.

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

The central personnel division shall provide a model base plan to each agency. Agencies may adopt the model plan, adopt the model plan with exceptions, or offer an alternative plan that meets the intent outlined in this section.

Upon adoption of an appropriate plan and application to the central personnel division, the division shall transfer appropriated general funds or special fund spending authority for the increases to the agencies.

SECTION 11. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-sixth legislative assembly that 1999-2001 compensation adjustments for permanent state employees are to be increases of a minimum of \$35 per month, beginning with the month of July 1999, to be paid in August 1999, and a minimum of \$35 per month, beginning with the month of July 2000, to be paid in August 2000. Any increases greater than \$35 per month may not be given across-the-board and must be based on merit and equity. Each agency appropriation is increased by 2.0 percent per year.

Probationary employees and employees whose documented performance levels do not meet standards are not eligible for the general or additional increases.

During the biennium, no salary increase other than the \$35 per month in July 1999 and \$35 per month in July 2000 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

It is the intent of the fifty-sixth legislative assembly that the workers compensation bureau provide pay raises based on merit and performance throughout the 1999-2001 biennium.

An agency may provide average salary increases of up to 3.0 percent for the second year of the 1999-2001 biennium only to the extent that the increase can be paid without an increase in the agency's appropriation. State agencies and institutions shall report to the office of management and budget on the amounts provided for salary increases for the second year of the biennium, any amounts transferred between line items pursuant to section 12 of this Act, the source of funding, and the impact on the provision of agency services. The office of management and budget shall report to the budget section at its December 2000 meeting concerning the amounts provided by state agencies and institutions for salary increases for the second year of the biennium, line item transfers relating to the increases, the source of the funding, and the impact on the provision of agency services.

SECTION 12. STATE AGENCIES - LINE ITEM TRANSFER AUTHORITY. 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 for an average of 3.0 percent employee salary increases for the second year of the 1999-2001 biennium as provided in section 11 of this Act.

SECTION 13. INTENT. Within the authority included in subdivision 1 of section 1 of this Act, are the following grants and special items:

| | |
|--|-----------|
| Boys and girls clubworks | \$53,000 |
| State contingencies | 600,000 |
| State memberships and related expenses | 317,000 |
| Firemen's association | 63,000 |
| Unemployment insurance | 1,200,000 |
| Capitol grounds planning commission | 25,000 |
| State lobbyist | 120,000 |

SECTION 14. TRANSFER. During the biennium beginning July 1, 1999, and ending June 30, 2001, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

| | |
|---|-------------|
| Lands and minerals trust fund | \$3,000,000 |
| Public employees life insurance program | 1,500,000 |
| Financial institutions regulatory fund | 200,000 |

SECTION 15. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS. Between January 1 and June 30, 2001, at the request of the director of the office of management and budget, the executive director of the department of human services shall sell such loans in the developmental disabilities revolving loan fund created under North Dakota Century Code section 6-09.6-01, as may be necessary to the Bank of North Dakota to provide \$2,150,000, or so much thereof as may be necessary, with the proceeds to be deposited in the general fund. The loans may only be sold to the extent necessary to achieve the June 30, 2001, ending general fund balance as estimated by the fifty-sixth legislative assembly.

SECTION 16. FIRE AND TORNADO FUND. The amount of \$63,000, 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 fire and tornado fund.

SECTION 17. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. During the biennium ending June 30, 2001, the industrial commission shall transfer to the state general fund up to \$50,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota. No more than \$15,000,000 of the amount transferred may come from accumulated undivided profits. The moneys must be transferred in the amounts and at such times as requested by the director of the office of management and budget.

No transfers may be made that would reduce the Bank's capital structure below \$100,000,000.

SECTION 18. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND - BUDGET SECTION APPROVAL. If, during the biennium ending June 30, 2001, the director of the office of management and budget determines via revised projections that general fund revenue collections will not meet the revenues as forecast in the March 1999 legislative forecast, then the industrial commission shall transfer to the state general fund an additional amount, as determined by the director of the office of management and budget and as approved by the budget section, from the earnings and accumulated and undivided profits of the Bank of North Dakota. Transfers made under the provisions of this section may not be made before July 1, 2000, and may only be made to the extent that the

transfer is necessary to achieve a projected June 30, 2001, general fund balance of \$10,000,000. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The additional amount transferred may not exceed the lesser of \$40,000,000 or the revenue shortfall of actual collections compared to the March 1999 legislative forecast.

No transfers may be made that would reduce the Bank's capital structure below \$100,000,000.

SECTION 19. FEDERAL PROGRAM TERMINATIONS - BLOCK GRANT - FUNDING REDUCTIONS - RELATED PROGRAM REDUCTIONS - REPORTS TO THE BUDGET SECTION. If the federal government during the 1999-2001 biennium terminates funding for any program administered by an agency, department, or institution of the state of North Dakota, the agency, department, or institution, subject to budget section approval, may terminate the program and not replace the reduction in federal funds with state funds, notwithstanding any other provision of law. If the federal government combines funding for separate programs in a block grant resulting in a reduction of total federal funds available for those programs, the administering agency, department, or institution may, subject to budget section approval, prioritize or reprioritize programs as necessary in making programmatic reductions. The agency, department, or institution may administer funds available under a new federal block grant or similar measure, consistent with the terms of that measure, notwithstanding any other provisions of law intended to conform to or implement the provisions of the repealed federal Act, and shall report any program terminations, reductions, or changes resulting from this section to the budget section of the legislative council for its approval.

SECTION 20. PROGRAM-BASED PERFORMANCE BUDGETING. The office of management and budget shall discontinue the program-based performance budgeting pilot project when preparing the 2001-03 biennium budget documents and accompanying appropriation bills. Budget documents for the 2001-03 biennium are to be based on the standard line items and are not to contain agency performance measures.

SECTION 21. LEGISLATIVE COUNCIL INTERIM STUDY OF PERFORMANCE INCENTIVE PILOT PROGRAMS. The legislative council shall consider studying the establishment of agency performance incentive pilot programs. If conducted, the study should address how agencies could develop, implement, administer, maintain, and evaluate performance incentive pilot programs. The study should also address the development of personnel policies and procedure manuals and how pay raises which may not be across the board are to be awarded as a reward and incentive for superior performance and the length of time they may be in effect. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 22. UNIVERSITY OF NORTH DAKOTA WINTER SPORTS FACILITY MAINTENANCE FUND. The university of North Dakota shall establish a reserve fund to be used to provide for future repair and maintenance costs related to the winter sports facility to be constructed at the university of North Dakota. The university shall establish a reserve fund for this purpose from building operating profits, donations, or other funds.

¹¹ **SECTION 23. AMENDMENT.** Subsection 2 of section 4-14.1-07 of the 1997 Supplement to the North Dakota Century Code as amended by section 11 of House Bill No. 1019, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

2. An ethanol plant that was in operation before July 1, 1995, and which ~~produced~~ has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol in the previous fiscal year may receive up to seven hundred fifty thousand dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fifteen million gallons [56781000 liters] or more of ethanol per year is not eligible for production incentives from the state.

SECTION 24. AMENDMENT. Section 15-39.1-26 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-26. Investment of moneys in fund - Interest and earnings attributable to fund. Investment of the fund ~~shall be~~ is under the supervision of the state investment board in accordance with chapter 21-10. ~~Such~~ The moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2. All interest and earnings on funds administered by the board must be credited to the fund.

SECTION 25. AMENDMENT. Subsection 2 of section 32-12.2-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The state risk management fund is a special fund in the state treasury administered by the director of the office of management and budget. The fund is a revolving fund consisting of contributions from participating state entities, all payments received by the fund from its activities, and other appropriations by the legislative assembly. The state investment board shall invest the fund in accordance with chapter 21-10. Funds received as contributions from state entities, all other payments deposited in the fund, and interest and income received on investments are hereby appropriated on a continuing basis for the purposes of the fund. Section 54-44.1-11 does not apply to the fund.

SECTION 26. AMENDMENT. Section 34-15-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-15-07. Disposition of civil money penalties. A civil money penalty collected under this chapter must be paid into the state treasury for deposit in the general fund ~~after the costs of recovering the civil money penalty are deducted therefrom.~~

¹¹ Section 4-14.1-07 was also amended by section 11 of House Bill No. 1019, chapter 19.

SECTION 27. AMENDMENT. Section 39-12-20 of the North Dakota Century Code is amended and reenacted as follows:

39-12-20. Proceeds of sale - Continuing appropriation. ~~The proceeds of sale must be applied first to the payment of deposited with the state treasurer. The state treasurer shall deposit in the highway fund an amount equal to the amount of the charges assessed pursuant to section 39-12-17 after paying the costs to the county. An amount equal to the costs of the proceedings, including attorneys and witness fees and costs, and next to the payment of the charges assessed. Such charges must be remitted to the state treasurer to be credited to the highways fund is appropriated on a continuing basis out of the funds collected to the county in which the prosecution took place for the purpose of defraying the costs of prosecution. The balance of the proceeds of any sale after the payment of costs and charges must be appropriated on a continuing basis out of the funds collected to be paid over by the sheriff to the person entitled thereto as determined by the court or must be deposited with the clerk of court for such payment.~~

¹² **SECTION 28. AMENDMENT.** Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

SECTION 29. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Expenses incurred to collect funds owed the state - Continuing appropriation. If a state agency enters a contract with a collection or credit agency to collect money due the state, the fees for services, reimbursement, or other remuneration to the collection or credit agency must be based on the amount of money actually collected. All funds collected on behalf of a state agency by a collection or credit agency must be deposited with the state treasurer. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract is appropriated from the fund into which the money collected was deposited to the state agency for which the funds were collected for the payment of fees due under the contract.

SECTION 30. A new section to chapter 54-11 of the North Dakota Century Code is created and enacted as follows:

Appointment of agents. The treasurer may appoint agents for the purpose of receiving public funds as required by section 12 of article X of the Constitution of North Dakota. If appointed by the state treasurer, the Bank of North Dakota shall serve as an agent of the state treasurer for the purpose of receiving public funds, including funds that must be deposited in higher education institution special revenue funds.

¹² Section 49-23-04 was also amended by section 7 of House Bill No. 1451, chapter 410, and section 1 of Senate Bill No. 2265, chapter 418.

SECTION 31. AMENDMENT. Section 54-16-04.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-04.1. May authorize acceptance and disbursement of federal funds. The emergency commission with the advice and counsel of the executive office of the budget may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize pass-through federal funds from one state agency to another state agency. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly. A state officer may not expend funds received from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

SECTION 32. AMENDMENT. Section 54-16-04.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-04.2. Commission may authorize acceptance and expenditure of moneys. The emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize a state officer to receive moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The emergency commission may authorize the state officer to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session.

SECTION 33. A new section to chapter 54-23.2 of the North Dakota Century Code is created and enacted as follows:

Mobile data terminal and 911 service fees. State radio communications shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by state radio communications for providing the service.

State radio communications shall charge at least twenty cents per telephone for 911 services provided to political subdivisions. Each county currently receiving 911 services from state radio communications shall abide by the standards established by the governor's emergency services advisory committee.

SECTION 34. AMENDMENT. Section 54-27.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-27.2-02. (Effective through June 30, 1999) Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of sixty-five million dollars at the end of any biennium must be

transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.

~~(Effective July 1, 1999) Certain general fund revenues to be deposited in the budget stabilization fund. Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of forty million dollars at the end of any biennium must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11.~~

¹³ **SECTION 35. AMENDMENT.** Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. State surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
3. If not disposed of under subsection 2, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. All proceeds received from the transfer or sale of state surplus property must be deposited ~~into the fund from which the property was originally purchased, less administrative expenses~~ with the state treasurer for deposit in the surplus property operating fund. For each piece of property, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased.
5. No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall

¹³ Section 54-44-04.6 was also amended by section 10 of House Bill No. 1170, chapter 474.

approve the exchange only if the director has determined that the item has been valued at fair value.

SECTION 36. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Tax commissioner to audit returns and state board of equalization to assess tax. The tax commissioner shall proceed to audit the returns of telecommunications carriers not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the taxpayer in detail as to the reason for the increase.

SECTION 37. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Deficiency, protest, and appeal.

1. When tax is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the telecommunications carrier of the error and the amount of additional tax due. This notice is not a notice of deficiency and the telecommunications carrier has no right to protest.
2. If upon audit the tax commissioner finds additional tax due, the tax commissioner shall notify the telecommunications carrier and the state board of equalization of the deficiency in the tax amount. A notice of deficiency must be sent to the telecommunications carrier by first-class mail and must state the amount of additional tax due and set forth the reasons for the increase.
3. A telecommunications carrier has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional tax due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a telecommunications carrier fails to file a written protest within the time provided, the amount of additional tax stated in the notice of deficiency becomes finally and irrevocably fixed. If a telecommunications carrier protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional tax due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the telecommunications carrier a notice of reconsideration and assessment which must respond to the telecommunications carrier's protest and assess the amount of any additional tax due. The amount set forth in that notice becomes finally and irrevocably fixed unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

SECTION 38. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Claims for credit or refund.

1. A telecommunications carrier 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 later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

SECTION 39. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Preservation of records. Every telecommunications carrier required to make a return and pay any tax under this chapter shall preserve records of the gross proceeds of sale as the commissioner may require and every carrier shall preserve for a period of three years and three months all invoices and other records of telecommunications services purchased for resale. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

SECTION 40. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Resale certificates. A telecommunications carrier who receives a resale certificate certifying that another telecommunications carrier holds a North Dakota sales and use tax permit for sales or use tax purposes under section 57-39.2-14 is relieved from submitting the telecommunications gross receipts tax upon the sale of telecommunications services to be resold by the telecommunications carrier submitting the certificate. When a telecommunications carrier submits a false resale certificate to another telecommunications carrier, the telecommunications carrier that submitted the certificate is liable for the telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests is not a telecommunications carrier under this section.

SECTION 41. AMENDMENT. Section 57-34-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all amounts paid by the reporting telecommunications carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and less amounts paid by the reporting telecommunications carrier to another telecommunications carrier for directory assistance originated by a caller in this state.
2. "Company" includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, association, or any other organization.
2. ~~3.~~ "Gross receipts" means all telecommunications carrier retail revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance originated by a caller in this state.
3. ~~4.~~ "Station" means a subscriber service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
4. ~~5.~~ "Telecommunications carrier" means a ~~person~~ company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
5. ~~6.~~ "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
 - d. ~~A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service; and~~
 - e. Telegraph service.
6. ~~7.~~ "Telecommunications service charges" means the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within the year of telecommunications service charges written off in a prior year as uncollectible. For a telecommunications carrier operating on any form of mutual basis, the term includes all amounts assessed against the members for the operation and maintenance of the business. The term does not include revenue from merchandising, jobbing and contract work, maintenance or repair of customer premises equipment including

equipment leased or rented by the customer from any source, operations not directly related to provision of telecommunications service, amounts charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or transfer, sale, or lease of property not directly related to telecommunications service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

SECTION 42. AMENDMENT. Section 57-34-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of telecommunications carriers - Penalty.

1. Each telecommunications carrier that received intercarrier telecommunications revenue in the preceding calendar year shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address of each telecommunications carrier from which the reporting telecommunications carrier received intercarrier telecommunications revenue in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
2. Each telecommunications carrier that provided telecommunications service in the preceding calendar year to one or more pay telephones owned by another company shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address for each company that owned a pay telephone served by the reporting telecommunications carrier in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
3. Each telecommunications carrier subject to gross receipts taxes under this chapter shall make and file with the tax commissioner, on or before May first of each year, on the form as the tax commissioner may prescribe, a report containing a statement of its gross receipts in this state during the preceding calendar year, amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and any other information as the tax commissioner may require. The form must include a notice of a telecommunications carrier's right to appeal its assessment to the state board of equalization prior to or at the August meeting of the state board of equalization. Each report must be signed, subject to section 12.1-11-02, by the president, secretary, or other official of the telecommunications carrier.

¹⁴ **SECTION 43. AMENDMENT.** Section 57-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁴ Section 57-34-03 was also amended by section 1 of Senate Bill No. 2101, chapter 506.

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before July fifteenth of each year, the tax commissioner shall review the report under subsection 3 of section 57-34-02 and compute the ~~tentative~~ total tax to be assessed against each telecommunications carrier in this state at a rate of two and one-half percent of adjusted gross receipts. ~~The~~ If the tax commissioner's computation of the total tax differs from the amount computed by a telecommunications carrier, the tax commissioner shall give ten days' notice of the change by mail to each that telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting on or before July fifteenth. The state board of equalization shall assess the tax under this section after consideration of any contest presented.
2. A telecommunications carrier's retail customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 44. AMENDMENT. Section 57-34-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county treasurer. The county treasurer shall allocate taxes received under this chapter to the state, the county, and the various taxing districts within the county according to the proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each currently existing taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.

SECTION 45. AMENDMENT. Section 57-34-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-10. Penalties - Interest - Lien for tax.

1. If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information, ~~and~~ If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report which must be collected as a part of the tax,

but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed.

2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. The unpaid principal balance of taxes on the following March first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalty and interest.
3. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon audit an additional tax is found to be due, there must be added to the tax remaining due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from March first to the date paid.
- ~~3.~~ 4. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the liability, the amount, including any interest, penalty, or addition to the tax, and the additional costs that may accrue are 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. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied.
5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

6. Upon payment of the tax, and any accrued penalties and interest, as to which the tax commissioner has filed a notice of lien, the tax commissioner shall index a satisfaction of the lien in the central indexing system without fees or costs.

SECTION 46. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Payments in lieu of taxes by bureau. If a building and associated real property is purchased by the workers compensation bureau pursuant to a legislative grant of authority, the bureau shall make payments in lieu of property taxes in the manner and according to the conditions and procedures that would apply if the building and property were privately owned.

SECTION 47. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,055,877, or so much thereof as may be necessary, and from special funds the sum of \$348,985 to the office of management and budget for the purpose of providing funding to state agencies and institutions to assist in providing the minimum of \$35 per month to permanent state employees for the biennium beginning July 1, 1999, and ending June 30, 2001. The office of management and budget shall transfer the funding provided in this section to state agencies and institutions to provide sufficient funding for the \$35 per month minimum salary increase.

SECTION 48. RETROACTIVE APPLICATION. Section 25 of this Act is effective for all funds received and deposited into the risk management fund on or after July 1, 1997.

SECTION 49. RETROACTIVE APPLICATION - EFFECTIVE DATE - EXPIRATION DATE. Sections 36 through 45 of this Act apply retroactively to all tax years beginning after December 31, 1997. The amendments to subsections 1 and 3 of section 57-34-01 as amended by section 41 of this Act are effective for taxable years beginning after December 31, 1998. The amendments to subsections 1 and 2 of section 57-34-02 as amended by section 42 of this Act are effective for the first two taxable years beginning after December 31, 1999, and are thereafter ineffective.

SECTION 50. APPLICATION. North Dakota Century Code sections 54-16-04 and 54-44.1-11 do not apply to chapter 30 of the 1997 Session Laws.

Approved April 23, 1999

Filed April 23, 1999

CHAPTER 38

SENATE BILL NO. 2016

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

EMERGENCY MANAGEMENT

AN ACT to provide an appropriation for defraying the expenses of the division of emergency management; and to provide for the filing and paying of disaster claims relating to the spring 1997 Red River flooding.

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, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|-------------------|
| Salaries and wages | \$2,298,200 |
| Operating expenses | 931,852 |
| Equipment | 186,653 |
| Grants | <u>62,738,332</u> |
| Total all funds | \$66,155,037 |
| Less estimated income | <u>65,230,947</u> |
| Total general fund appropriation | \$924,090 |

SECTION 2. APPROPRIATION. All federal funds received by the division of emergency management, for expenditures for projects at the university of North Dakota, in excess of those funds appropriated in section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The estimated income line item in section 1 of this Act includes \$248,799 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. FINAL SETTLEMENT OF SPRING 1997 FLOOD DISASTER CLAIMS - EMERGENCY MANAGEMENT, EMERGENCY COMMISSION, AND BUDGET SECTION APPROVAL. Before September 1, 2001, all disaster claims resulting from the governor's disaster declaration relating to the spring 1997 flooding in the Red River valley must be presented for final payment unless otherwise authorized by the legislative assembly. During the 1999-2001 biennium, the division of emergency management may request that loans be made by the Bank of North Dakota to affected political subdivisions, including school districts, for only those disaster claims that have been approved by the division of emergency management, the emergency commission, and the budget section of the legislative council.

Approved April 14, 1999
Filed April 14, 1999

CHAPTER 39**SENATE BILL NO. 2017**

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

ADJUTANT GENERAL

AN ACT to provide an appropriation for defraying the expenses of the adjutant general.

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 adjutant general's office for the purpose of defraying the expenses of the adjutant general's office, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|--|-------------------|
| Salaries and wages | \$3,113,511 |
| Operating expenses | 2,790,586 |
| Equipment | 50,000 |
| Capital improvements | 834,000 |
| Grants | 355,226 |
| Army guard contract | 13,148,810 |
| Tuition and enlistment compensation | 967,500 |
| Air guard contract | 5,342,154 |
| Civil air patrol | 105,584 |
| Civil air patrol - workers' compensation payment | <u>9,186</u> |
| Total all funds | \$26,716,557 |
| Less estimated income | <u>18,354,815</u> |
| Total general fund appropriation | \$8,361,742 |

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 40**SENATE BILL NO. 2018**

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

SEED DEPARTMENT

AN ACT to provide 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, 1999, and ending June 30, 2001, as follows:

| | |
|---|----------------|
| Salaries and wages | \$3,523,363 |
| Operating expenses | 1,201,470 |
| Equipment | 70,000 |
| Capital improvements | 20,000 |
| Grants | 300,000 |
| Contingency | <u>200,000</u> |
| Total appropriation from seed department fund | \$5,314,833 |

SECTION 2. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the state seed commission, the state seed department may transfer from the contingency line item in its appropriation to all other line items except the capital improvements line item. The commission shall notify the office of management and budget of each transfer.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 41

SENATE BILL NO. 2019

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

GAME AND FISH DEPARTMENT

AN ACT to make an appropriation for defraying the expenses of the state game and fish department; and to amend and reenact section 20.1-02-16.1 of the North Dakota Century Code, relating to the minimum balance of the game and fish 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 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 of the department, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|-----------------------------------|---------------------|
| Salaries and wages | \$12,218,261 |
| Operating expenses | 7,779,014 |
| Equipment | 771,505 |
| Capital improvements | 1,602,122 |
| Grants | 3,397,050 |
| Noxious weed control | 200,000 |
| Land habitat and deer depredation | 2,703,224 |
| Grants, gifts, and donations | 100,000 |
| Nongame wildlife conservation | 120,000 |
| Waterbank program | 200,000 |
| Wildlife services | 100,000 |
| Lonetree reservoir | <u>1,314,860</u> |
| Total special funds appropriation | <u>\$30,506,036</u> |

SECTION 2. LAND HABITAT AND DEER DEPREDATION. The amount of \$2,500,000, 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 habitat and depredation fund, to lease privately owned lands for wildlife habitat to reestablish wildlife population, to improve wildlife habitat on private lands, and to alleviate big game and furbearer depredation for the biennium beginning July 1, 1999, and ending June 30, 2001. These funds may be spent only for the purposes and using the guidelines contained in sections 20.1-03-12.1 and 20.1-02-05.

SECTION 3. NONGAME WILDLIFE. The amount of \$60,000, 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 purpose of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. WATERBANK PROGRAM. The amount of \$200,000, or such lesser amount as may be available, for the line item entitled waterbank program in section 1 of this Act, is from the game and fish department operating fund and must be used to increase water storage and enhance wildlife habitat in North Dakota. Contracts and agreements relating to the waterbank program may be entered into by the director of the game and fish department, in cooperation with the commissioner of agriculture.

SECTION 5. WILDLIFE SERVICES. The amount of \$100,000, or such lesser amount as may be available, for the line item entitled wildlife services in section 1 of this Act, is from the game and fish fund and must be used to provide grants to the wildlife services agency for projects to alleviate wildlife depredation and damage. Projects funded may include projects to alleviate waterfowl depredation and damage and must be approved by the director of the game and fish department.

SECTION 6. AMENDMENT. Section 20.1-02-16.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-16.1. ~~Use of game~~ Game and fish fund - Use - Required balance - Budget section approval. All income of the state game and fish department, deposited by the director with the state treasurer must be credited to the state game and fish fund and the fund may be used only by the department. All money derived from the investment of the fund or portions thereof of the fund must be credited to the game and fish department private land habitat and access improvement fund. The department shall spend moneys in the game and fish fund within the limits of legislative appropriations, only to the extent the balance of the fund is not reduced below ten million dollars, unless otherwise authorized by the budget section.

Approved April 15, 1999
Filed April 15, 1999

CHAPTER 42**SENATE BILL NO. 2020**

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

HISTORICAL SOCIETY

AN ACT to provide an appropriation for defraying the expenses of the state historical society; to provide for line item transfers for the 1997-99 biennium; to authorize line item transfers for the 1999-2001 biennium; 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 from other income, to the state historical society for the purpose of defraying the expenses of the state historical society, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|--|------------------|
| Salaries and wages | \$4,299,169 |
| Operating expenses | 908,323 |
| Equipment | 81,244 |
| Capital improvements | 782,735 |
| Grants | 485,559 |
| Yellowstone-Missouri-Fort Union Commission | 4,727 |
| Lewis and Clark bicentennial | <u>931,345</u> |
| Total all funds | \$7,493,102 |
| Less estimated income | <u>1,032,438</u> |
| Total general fund appropriation | \$6,460,664 |

SECTION 2. LINE ITEM TRANSFERS - 1999-2001 BIENNIUM. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer shall make transfers of funds between the capital improvements line item and the Lewis and Clark bicentennial line item in section 1 of this Act as may be requested by the state historical board for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. LINE ITEM TRANSFERS - 1997-99 BIENNIUM. Notwithstanding section 54-16-04, the director of the office of management and budget and the state treasurer, at the request of the superintendent of the state historical society, shall transfer \$34,886 from the equipment line item contained in subdivision 1 of section 1 of chapter 22 of the 1997 Session Laws to the operating expenses line item contained in subdivision 1 of section 1 of chapter 22 of the 1997 Session Laws. The authority to make this transfer begins with the effective date of this Act and ends on June 30, 1999.

SECTION 4. APPROPRIATION. There is hereby appropriated the sum of \$4,900 of federal funds available to the state historical society for the purpose of purchasing equipment for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 5. EMERGENCY. Sections 3 and 4 of this Act are declared to be an emergency measure.

Approved April 17, 1999

Filed April 19, 1999

CHAPTER 43

SENATE BILL NO. 2021

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

PARKS AND RECREATION DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the parks and recreation department and the International Peace Garden.

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 from other income, to the parks and recreation department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

| | |
|----------------------------------|------------------|
| Administration | \$1,403,829 |
| Recreation | 1,695,274 |
| Natural resources | 7,150,825 |
| Lewis and Clark bicentennial | <u>337,700</u> |
| Total all funds | \$10,587,628 |
| Less estimated income | <u>4,450,999</u> |
| Total general fund appropriation | \$6,136,629 |

Subdivision 2.

INTERNATIONAL PEACE GARDEN

| | |
|---|------------------|
| International Peace Garden | <u>\$364,583</u> |
| Total general fund appropriation | \$364,583 |
| Grand total general fund appropriation S.B. 2021 | \$6,601,212 |
| Grand total special funds appropriation S.B. 2021 | \$4,450,999 |
| Grand total all funds appropriation S.B. 2021 | \$11,052,211 |

SECTION 2. FUNDING - INTERNATIONAL PEACE GARDEN. The director of the parks and recreation department shall transfer fifty percent of the amount appropriated in the international peace garden line item in subdivision 2 of section 1 of this Act to the International Peace Garden within ten days of July 1, 1999, and transfer the remaining fifty percent within ten days of July 1, 2000. The director of the parks and recreation department may not reduce the funds appropriated for the International Peace Garden in subdivision 2 of 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.

SECTION 3. 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 parks and recreation department for the purpose of providing a grant to the North Dakota Lewis and Clark bicentennial foundation for the biennium beginning July 1, 1999, and ending June 30, 2001. The parks and recreation department may provide the grant

funds only to the extent the North Dakota Lewis and Clark foundation provides an equal amount of matching funds. The grant funds are intended to provide a portion of the funds needed to match federal transportation enhancement funds to be used to construct an addition to the Lewis and Clark interpretive center near Washburn.

SECTION 4. SNOWMOBILE FUND. The amount of \$601,786, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the snowmobile fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 5. TRAIL TAX TRANSFER FUND. The amount of \$25,000 or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the trail tax transfer fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. GAME AND FISH OPERATING FUND. The estimated income line item in section 1 of this Act includes the sum of \$80,000, or so much of the sum as may be necessary from the game and fish department operating fund, for the purpose of defraying expenses related to fishing activities in state parks located on Lake Sakakawea and Devils Lake.

SECTION 7. GAME AND FISH OPERATING FUND. The estimated income line item in section 1 of this Act includes the sum of \$168,750, or so much of the sum as may be necessary from the game and fish department operating fund, for the purpose of defraying expenses related to boat ramp repairs at Lake Sakakawea state park and Lewis and Clark state park.

SECTION 8. ADDITIONAL INCOME - EMERGENCY COMMISSION APPROVAL. All income of the parks and recreation department in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the parks and recreation department for the biennium beginning July 1, 1999, and ending June 30, 2001, and may be spent only upon approval of the emergency commission.

SECTION 9. LINE ITEM TRANSFERS - EMERGENCY COMMISSION AND BUDGET SECTION APPROVAL. Upon approval of the emergency commission, the parks and recreation department may transfer between various line items in section 1 of this Act appropriation authority of up to ten percent of a given line item to adjust for changing circumstances in meeting established performance measures. Any further transfers must be approved by the budget section.

SECTION 10. NOXIOUS WEED CONTROL. The parks and recreation department shall assess the extent of noxious weed infestation at state parks and implement a plan to control noxious weeds on state park lands for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved April 13, 1999
Filed April 14, 1999

CHAPTER 44**SENATE BILL NO. 2022**

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

TOURISM DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the tourism 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 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 tourism department for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|----------------|
| Salaries and wages | \$985,216 |
| Operating expenses | 3,220,437 |
| Equipment | 15,378 |
| Grants | 30,000 |
| Lewis and Clark bicentennial | <u>123,995</u> |
| Total all funds | \$4,375,026 |
| Less estimated income | <u>363,000</u> |
| Total general fund appropriation | \$4,012,026 |

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 45

SENATE BILL NO. 2023

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

WATER COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the state water commission; to provide an appropriation to the public service commission; to provide for a study by the state engineer of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed; 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 of the state water commission for the purpose of defraying the expenses of the various divisions, for the biennium beginning July 1, 1999, and ending June 30, 2001, as follows:

| | |
|----------------------------------|--------------------|
| Salaries and wages | \$8,013,657 |
| Operating expenses | 6,010,687 |
| Equipment | 160,656 |
| Capital improvements | 23,624,024 |
| Grants | 13,785,245 |
| Cooperative research | 3,050,000 |
| Total all funds | \$54,644,269 |
| Less estimated income | 45,435,921 |
| Total general fund appropriation | <u>\$9,208,348</u> |

SECTION 2. APPROPRIATION - PUBLIC SERVICE COMMISSION. There is hereby appropriated from federal funds, the sum of \$25,000, or so much of the sum as may be necessary, to the public service commission for the purpose of promoting the "one-call" call-before-you-dig program for the period beginning with the effective date of this Act and ending June 30, 1999.

SECTION 3. RESOURCES TRUST FUND. The amount of \$11,547,104, or so much of the funds as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is from the resources trust fund for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the state water commission in accordance with section 61-02-64.1.

SECTION 5. GRANTS. Section 54-44.1-11 does not apply to appropriations made for grants in this Act. However, this exclusion is only in effect for two years after June 30, 2001. Any unexpended funds after that period has expired must be transferred to the resources trust fund.

SECTION 6. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 1999-2001 revenues are in excess of \$11,547,104, 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, 1999, and ending June 30, 2001.

SECTION 7. STATE ENGINEER TO STUDY FEASIBILITY AND DESIRABILITY OF CONSTRUCTING DAMS AND OTHER IMPOUNDMENTS IN THE PEMBINA RIVER WATERSHED. The legislative assembly finds that floodwater in recent years has inundated parts of the cities of Neche and Pembina, and thousands of acres of farmland along the Pembina River in Pembina County. Construction of flood control dams and other impoundments in the Pembina River watershed in the United States and Canada may reduce flows on the Pembina River that may result in less severe flooding of the cities and farmland along the lower reaches of the Pembina River. Therefore, within the limits of available funds, the state engineer shall conduct a comprehensive study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River. The state engineer shall submit a report to an appropriate interim committee designated by the legislative council.

SECTION 8. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved April 20, 1999
Filed April 20, 1999

CHAPTER 46**SENATE BILL NO. 2024**

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

WORKERS COMPENSATION BUREAU

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau and its divisions.

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 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, 1999, and ending June 30, 2001, as follows:

| | |
|-----------------------------------|------------------|
| Salaries and wages | \$15,098,851 |
| Operating expenses | 7,508,962 |
| Equipment | <u>1,206,840</u> |
| Total special funds appropriation | \$23,814,653 |

SECTION 2. INTERNET WEB APPLICATION. The appropriation in section 1 of this Act includes funding for the bureau to develop an internet web application with electronic commerce capability, including the ability for employers to file payroll reports for workers' compensation coverage electronically through the internet. It is the intent of the fifty-sixth legislative assembly that in developing this internet web application, the bureau communicate with job service North Dakota and investigate ways in which the application can accommodate combined or streamlined reporting of common payroll and employment data to the bureau and to job service North Dakota.

Approved April 2, 1999
 Filed April 2, 1999

CHAPTER 47

SENATE BILL NO. 2025

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

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 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 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, 1999, and ending June 30, 2001, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

| | |
|-----------------------------------|---------------|
| Salaries and wages | \$1,447,708 |
| Operating expenses | 943,021 |
| Equipment | 49,200 |
| Contingency | <u>82,000</u> |
| Total special funds appropriation | \$2,521,929 |

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

| | |
|--|---------------|
| Salaries and wages | \$1,818,176 |
| Operating expenses | 1,222,052 |
| Equipment | 7,500 |
| Contingency | <u>25,000</u> |
| Total special funds appropriation | \$3,072,728 |
| Grand total special funds appropriation in S.B. 2025 | \$5,594,657 |

SECTION 2. LEGISLATIVE COUNCIL STUDY OF DEFINED CONTRIBUTION RETIREMENT PLAN AND DEFERRED COMPENSATION PROGRAM VENDORS.

The legislative council shall consider studying the number, qualifications, and selection criteria for vendors and providers selected by the public employees retirement system board for the defined contribution retirement plan established under House Bill No. 1257 and the deferred compensation program administered by the board under chapter 54-52.2. If the legislative council conducts the study, it shall report its findings and recommendations, together with any legislation required to implement its recommendations, to the fifty-seventh legislative assembly.

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 48

SENATE BILL NO. 2026

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

STATE OFFICIALS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various state departments and institutions; to amend and reenact subdivision 3 of section 1 of chapter 45 of the 1997 Session Laws, relating to the department of corrections and rehabilitation appropriation; 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 increase the general fund and special funds appropriation authority enacted by the fifty-fifth legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 1999, and ending June 30, 1999, as follows:

| | | |
|----------------------------------|--|---------------------|
| Subdivision 1. | | |
| | OFFICE OF THE ATTORNEY GENERAL | |
| Grants | | <u>\$130,606</u> |
| Total general fund appropriation | | <u>\$130,606</u> |
| Subdivision 2. | | |
| | UND-LAKE REGION | |
| Operating expenses | | <u>\$206,500</u> |
| Total general fund appropriation | | <u>\$206,500</u> |
| Subdivision 3. | | |
| | DIVISION OF EMERGENCY MANAGEMENT | |
| Operating expenses | | <u>\$15,100,000</u> |
| Total general fund appropriation | | <u>\$15,100,000</u> |
| Subdivision 4. | | |
| | ADJUTANT GENERAL | |
| National guard emergency fund | | <u>\$107,000</u> |
| Total general fund appropriation | | <u>\$107,000</u> |
| Subdivision 5. | | |
| | UNIVERSITY OF NORTH DAKOTA | |
| 1997 flood expenditures | | <u>\$3,898,228</u> |
| Total general fund appropriation | | <u>\$3,898,228</u> |
| Subdivision 6. | | |
| | DEPARTMENT OF CORRECTIONS AND REHABILITATION | |
| Operating expenses | | <u>\$2,250,000</u> |
| Total all funds | | <u>\$2,250,000</u> |
| Less estimated income | | <u>250,000</u> |

| | |
|---|--------------|
| Total general fund appropriation | \$2,000,000 |
| Grand total general fund appropriation S.B. 2026 | \$21,442,334 |
| Grand total special funds appropriation S.B. 2026 | \$250,000 |
| Grand total all funds appropriation S.B. 2026 | \$21,692,334 |

SECTION 2. AMENDMENT. Subdivision 3 of section 1 of chapter 45 of the 1997 Session Laws is amended and reenacted as follows:

Subdivision 3.

ADULT SERVICES

| | | |
|---|-------------------------|-------------------|
| Salaries and wages | \$20,252,555 | 18,652,555 |
| Operating expenses | 8,879,128 | <u>10,479,128</u> |
| Equipment | | 170,867 |
| Capital improvements | | 1,010,650 |
| Capital improvements - medium security facility | | 4,896,425 |
| Institutional medical fees | | 850,000 |
| Victim services | | 3,104,399 |
| Institutional offender services | | 321,991 |
| Community offender services | | <u>6,164,499</u> |
| Total all funds | | \$45,650,514 |
| Less estimated income | | <u>10,483,117</u> |
| Total general fund appropriation | | \$35,167,397 |

SECTION 3. EXEMPTION. The appropriation contained in subdivision 3 of section 1 of this Act is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation are available during the biennium beginning July 1, 1999, and ending June 30, 2001, for the purpose of providing state matching funds for public assistance and disaster hazard mitigation.

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

Approved April 13, 1999
 Filed April 14, 1999

CHAPTER 49**SENATE BILL NO. 2030**

(Legislative Council)

(Budget Section)

UND BUILDING APPROPRIATION

AN ACT to provide an appropriation for the construction of a building on the university of North Dakota campus; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. CONSTRUCTION OF BUILDING ON UNIVERSITY OF NORTH DAKOTA CAMPUS - APPROPRIATION. The state board of higher education may authorize the university of North Dakota to provide for the construction of a building on the campus for use as a university bookstore and for retail businesses other than for the off-sale of alcoholic beverages. There is appropriated the sum of \$4,500,000, or so much of the sum as may be necessary, from special funds, including donations, gifts, the sale of revenue bonds by or a loan from the university of North Dakota foundation, the sale of existing bookstore inventory, and bookstore reserves, to the university of North Dakota for the construction of a building for a university bookstore and for use for retail businesses other than for the off-sale of alcoholic beverages. The board and the university may lease the building to other entities for use as a bookstore and to retail businesses other than for the off-sale of alcoholic beverages. Any funds received for the lease are appropriated for use in operating and maintaining the building and other institutional needs. Neither the board nor the university may use funds other than the revenue derived from the lease of the building for the operation and maintenance of the building.

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

Approved April 1, 1999

Filed April 2, 1999

GENERAL PROVISIONS

CHAPTER 50

HOUSE BILL NO. 1045

(Legislative Council)
(Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to create and enact a new subsection to section 57-15-10 of the North Dakota Century Code, relating to correct placement of a reference to a city band levy; to amend and reenact sections 1-04-09, 1-08-08, 4-24-10, 9-10-06, subsection 10 of section 10-04-06, sections 10-06.1-12, 10-06.1-13, 10-19.1-05, subsections 3, 4, and 5 of section 10-19.1-10, sections 10-19.1-11, 10-19.1-23, subsection 4 of section 10-19.1-61, subsections 2 and 3 of section 10-19.1-75.2, subsection 2 of section 10-19.1-99, subsection 4 of section 10-19.1-100, subsection 2 of section 10-19.1-101, subsection 4 of section 10-19.1-103, subsection 2 of section 10-19.1-106, subsection 1 of section 10-19.1-108, sections 10-19.1-110.1, 10-19.1-112, 10-19.1-113.1, 10-19.1-129, 10-30-05, subsection 1 of section 10-30.1-04, section 10-30.5-04, subsections 2, 3, and 4 of section 10-32-07, subdivision b of subsection 5 of section 10-32-56, subsection 4 of section 10-32-107, subdivision j of subsection 5 of section 10-33-06, subsection 24 of section 10-33-21, subsection 3 of section 11-10.2-01, subdivision b of subsection 3 of section 12.1-32-15, section 16.1-01-07, subsection 3 of section 16.1-08.1-01, sections 18-08-12, 20.1-08-04.6, 21-10-06, subsection 2 of section 23-06.4-03, subsection 2 of section 23-06.5-10, subsection 12 of section 25-03.1-02, sections 26.1-17-02, 26.1-17-33, subsection 1 of section 26.1-18.1-02, subsection 1 of section 26.1-19-04, sections 26.1-49-03, 28-04-05.1, 29-12-05, 30.1-15-02, 30.1-29-26, 32-03-36, 36-01-08.1, 37-15-16, 37-15-17, 37-15-21, 38-08.1-03, subsection 3 of section 38-08.1-03.1, sections 40-51.2-05, 40-57.1-05, subsection 4 of section 41-09-16, sections 42-04-01, 43-07-19, subsection 10 of section 43-17-02, subsection 1 of section 43-17.1-06, subdivision h of subsection 1 of section 45-10.1-02, section 47-10.1-02, subsection 1 of section 47-15.1-03, subsection 3 of section 50-06-01.8, section 51-14-03.2, subsection 5 of section 53-06.2-11, subsection 1 of section 54-40-01, section 57-15-08, subdivision b of subsection 2 of section 57-35.3-05, sections 61-04.1-13, 61-04.1-14, 61-21-47, and 61-35-25 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal sections 10-19.1-03, 10-19.1-131, 14-02.1-06, 28-32-22, and chapter 61-24.4 of the North Dakota Century Code, relating to obsolete provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-04-09 of the North Dakota Century Code is amended and reenacted as follows:

1-04-09. Curing defects in title to real property. Any corporation organized otherwise than under the laws of this state, having acquired, or attempted to acquire, or to convey legal title by deed or lease to any real property in this state, before complying with the provisions of ~~chapter 40-22 of title 40 North Dakota law governing foreign corporations,~~ which prior to July 1, 1959, has complied with ~~said chapter,~~ those laws ~~shall be and hereby~~ is relieved from any disability ~~provided in said chapter~~ or prohibition ~~therein contained,~~ so far as ~~said statute relates~~ relating to the acquisition and holding of the property so acquired, or attempted to be acquired, and the title so acquired, or attempted to be acquired, hereby is confirmed.

SECTION 2. AMENDMENT. Section 1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

1-08-08. Validation of land titles acquired by corporations prior to before March 7, 1935. The title and ownership of any real estate acquired in any manner by any domestic or foreign corporation after July 29, 1932, and ~~prior to before~~ March 7, 1935, is ~~hereby~~ declared to be valid for all purposes, subject, however, to ~~all of the provisions contained in chapter 40-06~~ 10-06.1.

SECTION 3. AMENDMENT. Section 4-24-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry 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~~ marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

SECTION 4. AMENDMENT. Section 9-10-06 of the North Dakota Century Code is amended and reenacted as follows:

9-10-06. Willful acts and negligence - Liability. ~~Everyone~~ A person is responsible not only for the result of ~~his~~ the person's willful acts but also for an injury occasioned to another by ~~his~~ the person's want of ordinary care or skill in the management of ~~his~~ the person's property or ~~person self.~~ The extent of the liability in such cases is defined by sections 32-03-01 ~~to 32-03-19,~~ inclusive through 32-03-18.

¹⁵ **SECTION 5. AMENDMENT.** Subsection 10 of section 10-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. The sale of capital stock of a corporation or membership interests of a limited liability company may be exempted by the securities commissioner if the corporation or limited liability company is organized under chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; or the sale of memberships, including dues, in a nonprofit corporation incorporated ~~under chapter 40-24~~ in North Dakota may be exempted by the securities commissioner if the corporation is organized and operated for the primary purpose of promoting community development.

¹⁶ **SECTION 6. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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; ~~40-23~~, or the limited liability company meets all the requirements of chapter 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.

¹⁵ Section 10-04-06 was also amended by section 5 of House Bill No. 1144, chapter 92, and section 1 of House Bill No. 1154, chapter 94.

¹⁶ Section 10-06.1-12 was also amended by section 1 of Senate Bill No. 2271, chapter 95.

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.

¹⁷ **SECTION 7. AMENDMENT.** Section 10-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-13. Applicability of North Dakota Business Corporation Act. ~~Chapters Chapter~~ Chapter 10-19.1 ~~and 40-23~~ are ~~is~~ 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 chapter~~ chapter 10-19.1 ~~and 40-23~~.

¹⁸ **SECTION 8. AMENDMENT.** Section 10-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-05. Retention of two-thirds majority.

1. If the articles of a corporation described in section 10-19.1-02 or 10-19.1-03 do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above-mentioned actions ~~may~~, by signed written demand filed in duplicate original with the

¹⁷ Section 10-06.1-13 was also amended by section 2 of Senate Bill No. 2271, chapter 95.

¹⁸ Section 10-19.1-05 was also amended by section 6 of Senate Bill No. 2271, chapter 95.

secretary of state, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above-mentioned actions for which no required majority was specified, notwithstanding any provisions of section 10-19.1-19, 10-19.1-98, or 10-19.1-104 to the contrary. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 or 10-19.1-03 ~~may~~, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
3. A signed written demand by the shareholders of a corporation pursuant to subsection 1 or 2 is valid only if filed with the secretary of state before July 1, 1986.

¹⁹ **SECTION 9. AMENDMENT.** Subsections 3, 4, and 5 of section 10-19.1-10 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The following provisions govern a corporation unless modified in the articles:
 - a. A corporation has general business purposes as provided in section 10-19.1-08.
 - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
 - d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
 - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.

¹⁹ Section 10-19.1-10 was also amended by section 7 of Senate Bill No. 2271, chapter 95.

- f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
- g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
- j. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
- l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
- m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
- n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
- o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
- p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.

- q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection ~~3~~ 5 of section ~~10-19.1-77~~ 10-19.1-73.2.
 - 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.
4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
 - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
 - c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
 - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
 - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
 - f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
 - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
 - h. A committee 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 as provided in section 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 3 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 and entitled to vote at the meeting as provided in subsection 1 of section ~~40-19.1-77~~ 10-19.1-73.2.
 - o. Indemnification of certain persons is required as provided in section 10-19.1-91.
 - 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.
5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
 - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
 - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
 - d. Directors may be classified as provided in section 10-19.1-38.
 - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
 - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
 - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
 - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
 - i. Additional officers may be designated as provided in section 10-19.1-52.
 - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.

- k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
- l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
- m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
- n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
- o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
- p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
- q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection ~~4~~ 6 of section ~~10-19.1-77~~ 10-19.1-73.2.
- s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
- u. 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.

²⁰ **SECTION 10. AMENDMENT.** Section 10-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-11. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law and that all fees have been paid under ~~chapter 10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the incorporators or their representative.

²¹ **SECTION 11. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

²⁰ Section 10-19.1-11 was also amended by section 8 of Senate Bill No. 2271, chapter 95.

²¹ Section 10-19.1-23 was also amended by section 10 of Senate Bill No. 2271, chapter 95.

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 40-23~~ section 10-19.1-147, then the articles of amendment must be recorded in the office of the secretary of state.

A corporation 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.

²² **SECTION 12. AMENDMENT.** Subsection 4 of section 10-19.1-61 of the North Dakota Century Code is amended and reenacted as follows:

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 with the secretary of state, ~~together~~ with the fees provided in ~~chapter 40-23~~ section 10-19.1-147, 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 13. AMENDMENT. Subsections 2 and 3 of section 10-19.1-75.2 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Participation in a conference meeting the requirements of subsection 1 constitutes presence at the meeting in person or by proxy if all the other requirements of section ~~40-19.1-80~~ 10-19.1-76.2 are met.
3. 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 participants, and all persons 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 ~~40-19.1-80~~ 10-19.1-76.2 are met.

²³ **SECTION 14. AMENDMENT.** Subsection 2 of section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of merger must be signed on behalf of each constituent corporation and filed with the secretary of state, ~~together~~ with the fees provided in ~~chapter 40-23~~ section 10-19.1-147.

²² Section 10-19.1-61 was also amended by section 12 of Senate Bill No. 2271, chapter 95.

²³ Section 10-19.1-99 was also amended by section 30 of Senate Bill No. 2271, chapter 95.

²⁴ **SECTION 15. AMENDMENT.** Subsection 4 of section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

4. Within thirty days after a copy of the plan of merger is mailed to shareholders of 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~~ section 10-19.1-147.

²⁵ **SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

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~~ section 10-19.1-147, articles of abandonment that contain:
 - a. The name of the 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.

²⁶ **SECTION 17. AMENDMENT.** Subsection 4 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving corporation in a merger will be a foreign corporation and will transact business in this state, it shall comply with the provisions of ~~chapter 10-22~~ 10-19.1 with respect to foreign corporations. In every case the surviving corporation 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

²⁴ Section 10-19.1-100 was also amended by section 31 of Senate Bill No. 2271, chapter 95.

²⁵ Section 10-19.1-101 was also amended by section 32 of Senate Bill No. 2271, chapter 95.

²⁶ Section 10-19.1-103 was also amended by section 34 of Senate Bill No. 2271, chapter 95.

corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;

- 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 shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 10-19.1-87.

²⁷ **SECTION 18. AMENDMENT.** Subsection 2 of section 10-19.1-106 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of dissolution must be filed with the secretary of state, ~~together~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

²⁸ **SECTION 19. AMENDMENT.** Subsection 1 of section 10-19.1-108 of the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file with the secretary of state, ~~together~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, a notice of intent to dissolve. The notice must contain:
 - a. The name of the corporation;
 - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and
 - c. A statement that the requisite vote of the shareholders was received or that all shareholders entitled to vote signed a written action.

SECTION 20. AMENDMENT. Section 10-19.1-110.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110.1. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the corporation has elected not to give notice to creditors and claimants in the manner provided in section ~~10-19.1-100~~ 10-19.1-110:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-19.1-110:
 - a. Must be filed with the secretary of state after:

²⁷ Section 10-19.1-106 was also amended by section 35 of Senate Bill No. 2271, chapter 95.

²⁸ Section 10-19.1-108 was also amended by section 36 of Senate Bill No. 2271, chapter 95.

- (1) The payment of claims of all known creditors and claimants has been made or provided for; or
 - (2) At least two years have elapsed from the date of filing the notice of intent to dissolve; and
- b. Must state:
- (1) If the articles of dissolution are being filed pursuant to paragraph 1 of 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;
 - (2) 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
 - (3) 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.
2. With respect to claims against a corporation that does 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.

²⁹ **SECTION 21. AMENDMENT.** Section 10-19.1-112 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-112. Revocation of dissolution proceedings.

1. Dissolution proceedings commenced pursuant to section 10-19.1-107 may be revoked prior to filing of articles of dissolution.

²⁹ Section 10-19.1-112 was also amended by section 37 of Senate Bill No. 2271, chapter 95.

2. Written notice must be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation must be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.
3. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state, ~~together~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The corporation may thereafter resume business.

³⁰ **SECTION 22. AMENDMENT.** Section 10-19.1-113.1 is amended and reenacted 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~~ section 10-19.1-147, 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.

³¹ **SECTION 23. AMENDMENT.** Section 10-19.1-129 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-129. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand

³⁰ Section 10-19.1-113.1 was also amended by section 38 of Senate Bill No. 2271, chapter 95.

³¹ Section 10-19.1-129 was also amended by section 39 of Senate Bill No. 2271, chapter 95.

required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship 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 corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer 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 corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, ~~along~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation 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. 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 10-23-02.2~~, service may be made according to subsection 2.
5. A record 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 must be maintained in the office of the secretary of state.
6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

³² **SECTION 24. AMENDMENT.** Section 10-30-05 of the North Dakota Century Code is amended and reenacted as follows:

³² Section 10-30-05 was also amended by section 44 of Senate Bill No. 2271, chapter 95.

10-30-05. Business Corporation Act to apply. The provisions of ~~chapters~~ chapter 10-19.1; ~~40-22~~; and ~~40-23~~ apply to state development corporations as they may be applicable and not inconsistent with this chapter.

³³ **SECTION 25. AMENDMENT.** Subsection 1 of section 10-30.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. To carry out the purposes of this chapter, venture capital corporations may be formed under ~~chapters~~ chapter 10-19.1 ~~through 40-23~~ 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.

SECTION 26. AMENDMENT. Section 10-30.5-04 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-04. Powers. The corporation must be organized as a nonprofit corporation ~~under chapter 40-24~~. In addition to the powers in chapter ~~40-24~~ 10-33, the corporation may:

1. Cooperate and contract with any private or public entity.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other private or public contributors.

³⁴ **SECTION 27. AMENDMENT.** Subsections 2, 3, and 4 of section 10-32-07 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member central agreement under section 10-32-50:
 - a. A limited liability company has general business purposes as provided in section 10-32-04;
 - b. A limited liability company has certain powers as provided in section 10-32-23;
 - c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors as provided in section 10-32-68;
 - d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;

³³ Section 10-30.1-04 was also amended by section 45 of Senate Bill No. 2271, chapter 95.

³⁴ Section 10-32-07 was also amended by section 51 of Senate Bill No. 2271, chapter 95.

- e. The affirmative vote of a majority of governors present is required for an action of the board of governors as provided in section 10-32-83;
- f. A written action by the board of governors taken without a meeting must be signed by all governors as provided in section 10-32-84;
- g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in 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 as provided in 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 as provided in 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 as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board of governors as provided in 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 as provided in 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 as provided in section ~~10-32-45~~ 10-32-40.1;
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in 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 as provided in section 10-32-36;
- p. A written action by the members taken without a meeting must be signed by all members as provided in 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 as provided in section 10-32-62;
- r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;

- s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
 - t. Unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109; and
 - u. A limited liability company dissolves upon an occurrence of an event that terminates the continued membership of any member as provided in subsection 1 of section 10-32-109.
3. The following provisions govern a limited liability company unless modified either in the articles of organization, a member central agreement under section 10-32-50, or in the operating agreement:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
 - b. The compensation of governors is fixed by the board of governors as provided in section 10-32-74;
 - c. A certain method must be used for removal of governors as provided in section 10-32-78;
 - d. A certain method must be used for filling board of governor vacancies as provided in 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 as provided in subsection 1 of section 10-32-80;
 - f. The notice of a board of governors meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
 - g. A majority of the board of governors is a quorum for a board meeting as provided in 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 as provided in subsection 2 of section 10-32-85;
 - i. The board may establish a special litigation committee as provided in section 10-32-85;
 - j. The president and treasurer have specified duties, until the board of governors determines otherwise as provided in 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 as provided in section 10-32-95;
 - l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in 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 as provided in 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 as provided in 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 as provided in ~~subsection 4 of section 10-32-45~~ 10-32-40.1;
 - p. Indemnification of certain persons is required as provided in 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 as provided in 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 as provided in 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, a member central agreement under section 10-32-50, 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 as provided in subsection 1 of section 10-32-69;
 - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
 - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
 - d. Governors may be classified as provided in section 10-32-75;
 - e. The date, time, and place of board of governors meetings may be fixed as provided in subsection 1 of section 10-32-80;
 - f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;

- g. A larger than majority vote may be required for board of governor action as provided in 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 as provided in section 10-32-89;
- i. Additional managers may be designated as provided in section 10-32-88;
- j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
- k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
- l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
- m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
- n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
- o. A larger than majority vote may be required for member action as provided in section 10-32-42;
- p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in ~~subsection 3 of section 10-32-45~~ 10-32-40.1;
- q. Limited liability company actions giving rise to dissenter rights may be designated as provided in 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 as provided in subsection 4 of section 10-32-86.

³⁵ **SECTION 28. AMENDMENT.** Subdivision b of subsection 5 of section 10-32-56 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Be ordinary membership interests entitled to vote as provided in section ~~10-32-45~~ 10-32-40.1, 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

³⁵ Section 10-32-56 was also amended by section 80 of Senate Bill No. 2271, chapter 95.

³⁶ **SECTION 29. AMENDMENT.** Subsection 4 of section 10-32-107 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~40-22~~ 10-19.1 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 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.

³⁷ **SECTION 30. AMENDMENT.** Subdivision j of subsection 5 of section 10-33-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. A corporation may issue membership certificates, or preferred or common shares as the board deems appropriate as provided in section ~~40-31-58~~ 10-33-58.

SECTION 31. AMENDMENT. Subsection 24 of section 10-33-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24. Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with ~~section 59-02-08~~ sections 59-02-08.1 through 59-02-08.11.

³⁶ Section 10-32-107 was also amended by section 120 of Senate Bill No. 2271, chapter 95.

³⁷ Section 10-33-06 was also amended by section 133 of Senate Bill No. 2271, chapter 95.

³⁸ **SECTION 32. AMENDMENT.** Subsection 3 of section 11-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. This option is available in addition to, or in lieu of, other county structural options authorized under this title, 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.~~

³⁹ **SECTION 33. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

- b. Has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses set forth in subdivisions a and e of subsection 1; or

SECTION 34. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. ~~Sample ballots must conform in form and style to samples of such ballots contained in the legal publications handbook prepared under subsection 5 of section 46-01-02.~~ Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a voting machine, depending upon the method of voting used in the area involved. Absentee voter ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and voting machines are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. For two consecutive weeks before the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become

³⁸ Section 11-10.2-01 was also amended by section 14 of Senate Bill No. 2390, chapter 98.

³⁹ Section 12.1-32-15 was also amended by section 3 of Senate Bill No. 2223, chapter 123, and section 1 of Senate Bill No. 2299, chapter 131.

familiar with the effect of the proposed constitutional amendment or initiated or referred measure.

⁴⁰ **SECTION 35. AMENDMENT.** Subsection 3 of section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source. This definition does not include:
 - a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on the candidate's own behalf.
 - d. Any money received from a district or state committee of a political party, as established pursuant to sections ~~16.1-03-06~~ 16.1-03-07 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03.

SECTION 36. AMENDMENT. Section 18-08-12 of the North Dakota Century Code is amended and reenacted as follows:

18-08-12. Annual fire inspection of state buildings and institutions. An annual fire inspection shall be performed at each state institution and building. The state fire marshal shall ~~annually~~ annually inspect annually the state penitentiary ~~and, the James River correctional center, the Missouri River correctional center, the North Dakota youth correctional center, and the state hospital; and san haven.~~ The annual inspection of all other state institutions and buildings ~~shall~~ must be made by the fire department of the city or fire protection district in which the institution or building is located, at the direction of the officer in charge of the institution or building, who shall prepare a report based upon the findings of the fire inspection. The report, which ~~shall~~ must contain specifications of any violations, ~~shall~~ must be submitted to the responsible board, agency, or commission and a copy of the report ~~shall~~ must be submitted to the state fire marshal. If the report indicates that any violations can be corrected within the current budget of the responsible board, agency, or commission, action to correct the violations, unless good cause can be demonstrated to the attorney general, ~~shall~~ must be initiated within thirty days of receipt of the report by the responsible board, agency, or commission. For purposes of this section, a "fire inspection" is a procedure performed in accordance with

⁴⁰ Section 16.1-08.1-01 was also amended by section 3 of Senate Bill No. 2148, chapter 204.

standards set forth in the uniform building code, the code of the building officials and code administrators, or the code of the national fire protection association.

SECTION 37. AMENDMENT. Section 20.1-08-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation shall hold a raffle under rules adopted by the commissioner with only residents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds must be used for elk management and related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the commissioner requires. Except for landowners who receive special elk depredation management licenses issued to landowners ~~of~~ under subsection 7 of section 20.1-03-11 and persons who receive a special elk depredation management license issued by lottery under this section, a person may only receive one license to hunt elk issued by lottery and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle in a lifetime.

SECTION 38. AMENDMENT. Section 21-10-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section ~~37-15-14.1.~~
- ~~6.~~ National guard tuition trust fund.
- ~~7.~~ 6. Public employees retirement system.
- ~~8.~~ 7. Insurance regulatory trust fund.
- ~~9.~~ 8. State risk management fund.
- ~~10.~~ 9. Veterans' cemetery trust fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

SECTION 39. AMENDMENT. Subsection 2 of section 23-06.4-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a 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~~ district court for the county in which the facility is located.

SECTION 40. AMENDMENT. Subsection 2 of section 23-06.5-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ district 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.

SECTION 41. AMENDMENT. Subsection 12 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12. "Private treatment facility" means any facility established under ~~chapters~~ chapter 10-19.1; ~~40-22, and 40-24~~ or 10-33 and licensed under chapter 23-16 or 23-17.1.

SECTION 42. AMENDMENT. Section 26.1-17-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-02. Nonprofit health service corporations authorized. A health service corporation must be organized under this chapter and, to the extent applicable,

under chapter ~~40-24~~ 10-33 for the purposes of establishing and putting into effect a health service plan whereby one or more kinds of health service is provided to subscribers under a contract entitling each subscriber to certain specified health service. Any corporation subject to this chapter is not subject to the laws of this state relating to insurance and insurance companies, except as specifically provided in such laws. This chapter applies only to corporations organized pursuant to its provisions, except as specifically provided otherwise.

SECTION 43. AMENDMENT. Section 26.1-17-33 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-33. Liquidation - Dissolution - Merger - Consolidation. Any involuntary liquidation and dissolution of a health service corporation is governed by chapter 26.1-07. Any voluntary liquidation and dissolution is governed by chapter ~~40-26~~ 10-33. Any merger or consolidation of a health service corporation is subject to the approval of the commissioner in accordance with the procedures set forth in chapter 26.1-07, but the consolidation or merger must be accomplished under chapter ~~40-25~~ 10-33.

SECTION 44. AMENDMENT. Subsection 1 of section 26.1-18.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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~~ obtaining a certificate of authority as a foreign corporation under section ~~40-22-04~~ 10-19.1-136 and compliance with all provisions of this chapter and other applicable state laws.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-19-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a prepaid legal services organization in compliance with this chapter. A person may not establish or operate a prepaid legal services organization in this state, or sell, offer to sell, or solicit offers to purchase or receive advance or periodic considerations in conjunction with a prepaid legal services plan without obtaining a certificate of authority under this chapter. A foreign corporation may similarly apply for a certificate of authority under this chapter, subject to ~~its registration to do business in this state~~ obtaining a certificate of authority as a foreign corporation under ~~chapter 40-22~~ section 10-19.1-136.

SECTION 46. AMENDMENT. Section 26.1-49-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-49-03. Powers. In addition to the powers granted a cooperative under chapter 10-15, a health provider cooperative has the powers granted a nonprofit corporation under chapter ~~40-24~~ 10-33. The power granted under chapter 10-15 controls over any inconsistent power granted by chapter ~~40-24~~ 10-33.

SECTION 47. AMENDMENT. Section 28-04-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-04-05.1. Venue of trials. Notwithstanding any other provision of this chapter, if the county seats of adjoining counties are less than ten miles [16.10 kilometers] 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.

SECTION 48. AMENDMENT. Section 29-12-05 of the North Dakota Century Code is amended and reenacted as follows:

29-12-05. Bench warrant, misdemeanor, infraction, or bailable felony. If an offense is a misdemeanor, an infraction, or a bailable felony, the bench warrant issued must be in a form similar to form ~~40~~ 12 as contained in the appendix to the North Dakota Rules of Criminal Procedure, but must add to the body thereof a direction to the following effect, "or if ~~he~~ the person requires it, that you take ~~him~~ the person before any magistrate of that county or in the county in which you arrest ~~him~~ the person, that ~~he~~ the person may give bail to answer the information (or indictment)".

SECTION 49. AMENDMENT. Section 30.1-15-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-15-02. (3-402) Formal testacy or appointment proceedings - Petition - Contents.

1. Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:
 - a. Requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs.
 - b. Contains the statements required for informal applications as stated in ~~the five subdivisions under~~ paragraphs 1 through 6 of subdivision a of subsection 1 of section 30.1-14-01 and the statements required by subdivisions b and e of subsection 2 paragraphs 2 and 3 of subdivision b of subsection 1 of section 30.1-14-01.
 - c. States whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

2. A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by ~~subsections 4 and 4~~ subdivisions a and d of subsection 1 of section 30.1-14-01 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by ~~subdivision b of subsection 4~~ paragraph 2 of subdivision d of subsection 1 of section 30.1-14-01 may be omitted.

SECTION 50. AMENDMENT. Section 30.1-29-26 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

30.1-29-26. (5-426) Enlargement or limitation of powers of conservator.

Subject to the restrictions in subdivision d of subsection 2 of section 30.1-29-08, the court may confer on a conservator at the time of appointment or later, in addition to the powers conferred on the conservator by sections 30.1-29-24 and 30.1-29-25, any power which the court itself could exercise under ~~subsections 2 and 3~~ subdivisions b and c of subsection 2 of section 30.1-29-08. The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by sections 30.1-29-24 and 30.1-29-25, or previously conferred by the court, and may at any time relieve the conservator of any limitation. If the court limits any power conferred on the conservator by sections 30.1-29-24 and 30.1-29-25, the limitation shall be endorsed upon the conservator's letters of appointment.

SECTION 51. AMENDMENT. Section 32-03-36 of the North Dakota Century Code is amended and reenacted as follows:

32-03-36. Recovery not more than gained by performance. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than the person could have gained by the full performance thereof on both sides, except in the cases wherein exemplary damages or penal damages are authorized, and in the ~~cases~~ case specified in ~~sections 32-03-19, 32-03-26, and section~~ section 36-21-13.

⁴¹ **SECTION 52. AMENDMENT.** Section 36-01-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.1. ~~Captive wildlife~~ Nontraditional livestock license - Fee. The board of animal health may require a license for ~~captive wildlife~~ nontraditional livestock maintained within this state. The annual fee for a license for a bird species required to be licensed is five dollars. The maximum amount of 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 amount of annual fees for nonbird species licenses to be paid by a person holding more than one nonbird species license is seventy-five dollars.

⁴¹ Section 36-01-08.1 was also amended by section 4 of House Bill No. 1276, chapter 317.

SECTION 53. AMENDMENT. Section 37-15-16 of the North Dakota Century Code is amended and reenacted as follows:

37-15-16. Commandant shall take charge of unclaimed estates of small value.

If a member of the veterans' home dies leaving property of the value of three thousand dollars or less, the commandant immediately shall take charge of such property. If within forty-five days of the date of death no valid claim of any heir or devisee is made for the property and no application or petition has been filed for issuance of letters of administration, the commandant shall convert the property into cash without probate or other proceedings and make payment in the following order:

1. Reasonable funeral expenses.
2. Reasonable and necessary medical and hospital expenses of the last illness of the decedent.

If any cash remains the commandant shall deposit the cash with the state treasurer who shall credit it to the veterans' home ~~improvement~~ operating fund. The commandant shall make a report of the commandant's action to the administrative committee on veterans' affairs. The report must be audited by, and included in the records of, the committee.

SECTION 54. AMENDMENT. Section 37-15-17 of the North Dakota Century Code is amended and reenacted as follows:

37-15-17. Intestate members leaving estates valued in excess of three thousand dollars - Commandant to administer. If a member of the veterans' home dies leaving property in excess of three thousand dollars in value not disposed of by will, the commandant is entitled to letters of administration upon such estate. ~~He~~ The commandant shall make application apply to the proper court for letters of administration, qualify as administrator, and distribute and dispose of such estate as is provided by this code. If no valid claim is made to such estate by the heirs or the next of kin of the deceased member for a period of one year after the granting of letters of administration, the residue of the estate must be deposited with the state treasurer for the benefit of the veterans' home ~~improvement~~ operating fund.

SECTION 55. AMENDMENT. Section 37-15-21 of the 1997 Supplement to 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 and expend funds from any source, including federal or private sources 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. 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~~ operating fund unless by the terms of acquisition, the moneys are required to be maintained in a different manner.

SECTION 56. AMENDMENT. Section 38-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-03. Deemed doing business within state - Resident agent. A person must be deemed doing business within this state when engaged in geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter ~~40-22~~ 10-19.1, prior to such exploration, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 57. AMENDMENT. Subsection 3 of section 38-08.1-03.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter ~~40-22~~ under section 10-19.1-136, a certificate of incorporation issued pursuant to ~~under~~ chapter 10-19.1, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the commission shall issue to the person desiring to engage in geophysical exploration or plugging operations or any subcontractor of that person a certificate showing that the bond has been filed and showing the name and address of the surety company and the name of the person designated resident agent for service of process.

SECTION 58. AMENDMENT. Section 40-51.2-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-51.2-05. Notice - Petition of owners and electors - Mediation.

1. The governing body may not take final action on a petition presented by owners and qualified electors until the petitioners have given notice of presentation of the petition by one publication in the official newspaper of the city as provided by section 40-01-09 and the governing body has mailed a notice of the time and place of consideration of the petition to the owner of each parcel of real property within the area described in the petition at the person's last known mailing address. The notice is not required to be sent to any owner of real property who signed a petition pursuant to section 40-51.2-03 or 40-51.2-04. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city, the governing body of the city must also mail the notice of the time and place of consideration of the petition to the governing body of the other city.
2. If the land area petitioned to be annexed to the city lies within the extraterritorial zoning or subdivision regulation authority of another city and written consent to annex the land area is not received from the governing body of the other city, the annexing city may either stop its pursuit of the annexation or submit the matter to a committee for mediation as provided in section 40-51.2-07.1. If mediation does not resolve the matter, the office of administrative hearings may be petitioned to hear the matter in accordance with sections 40-51.2-08, 40-51.2-09, ~~40-51.2-10~~, 40-51.2-11, 40-51.2-12, 40-51.2-13, 40-51.2-14, 40-51.2-15, 40-51.2-16, and 40-51.2-17.

SECTION 59. AMENDMENT. Section 40-57.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-05. Reapplication for tax exemption - Discretion of board of equalization. The municipality or the state board of equalization, ~~in its discretion,~~ upon the presentation of additional facts and circumstances which were not presented or discovered at the time of the original application for tax exemption under the provisions of this chapter, may accept reapplications from project operators at any time if the project operators first publish notice of application for tax exemption as required by this chapter.

SECTION 60. AMENDMENT. Subsection 4 of section 41-09-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A transaction, although subject to this chapter, is also subject to chapters ~~13-03~~ 13-03.1, 35-05, 49-09, and 51-13, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

SECTION 61. AMENDMENT. Section 42-04-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

42-04-01. "Agricultural operation" defined. As used in this chapter, "agricultural operation" means the science and art of production of plants and animals useful to ~~man people,~~ by a corporation ~~as provided in chapter 10-06,~~ or a limited liability company as allowed under chapter 10-06.1, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for ~~man's people's~~ use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

⁴² **SECTION 62. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state ~~of the state of North Dakota~~ a written appointment by which such applicant appoints the secretary of state ~~of the state of North Dakota~~ as ~~his~~ the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of said contractor's consent that any such process against ~~him~~ the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon ~~him~~ the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter ~~40-22~~ 10-19.1 and registered foreign limited liability companies entitled to do business in the state according to chapter 10-32 and having a current registered agent and registered address on file in the corporate division of the secretary of state's office need not appoint the secretary of state as agent for service of process under ~~the provisions of~~ this section. Within ten days after service of the summons upon the secretary of state, notice of such service ~~together~~ with the summons and complaint in the action shall be sent to the

⁴² Section 43-07-19 was also amended by section 6 of Senate Bill No. 2149, chapter 373.

defendant contractor at ~~his~~ the defendant contractor's last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon ~~him~~ the secretary of state under ~~the provisions of~~ this section. ~~Such record shall show,~~ showing the day and hour of service. Whenever service of process ~~shall have been~~ was made as ~~provided in~~ under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against ~~him~~ the defendant contractor.

⁴³ **SECTION 63. AMENDMENT.** Subsection 10 of section 43-17-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. Any person rendering services as a ~~physician's trained~~ physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician ~~and provided that the.~~ However, sections 43-17-02.1 and 43-17-02.2 do apply to physician assistants. The state board of medical examiners shall prescribe rules ~~and regulations~~ governing the conduct, activities, and supervision of ~~physicians' trained~~ physician assistants. ~~Physicians' trained~~ Physician assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

⁴⁴ **SECTION 64. AMENDMENT.** Subsection 1 of section 43-17.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 in~~ board proceedings; however, the proceedings and records of a committee that are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.

SECTION 65. AMENDMENT. Subdivision h of subsection 1 of section 45-10.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a

⁴³ Section 43-17-02 was also amended by section 2 of House Bill No. 1158, chapter 380.

⁴⁴ Section 43-17.1-06 was also amended by section 8 of House Bill No. 1157, chapter 381.

document in compliance with subsection ~~2 of this section~~ 3, of:

- (a) Another limited partnership;
 - (b) A corporation;
 - (c) A limited liability company; or
 - (d) A limited liability partnership; ~~or~~
- (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.

⁴⁵ **SECTION 66. AMENDMENT.** Section 47-10.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-10.1-02. Restriction on acquisition - Exceptions. A person who is not a citizen of the United States or a citizen of Canada, except a permanent resident alien of the United States, may not acquire directly or indirectly any interest in agricultural land. A partnership, limited partnership, limited liability company, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this section. This section does not apply to a foreign corporation or a foreign limited liability company which acquires agricultural land for use as an industrial site where construction contracts are entered into by the corporation or limited liability company within one hundred fifty days after acquisition of the land; provided, that this exception shall only apply to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation or a foreign limited liability company which owns agricultural land for industrial purposes but which discontinues using the land for industrial purposes shall dispose of the land as provided by chapter ~~40-06~~ 10-06.1. A foreign corporation or foreign limited liability company shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land. This section does not apply to

⁴⁵ Section 45-10.1-02 was also amended by section 146 of Senate Bill No. 2271, chapter 95.

citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.

SECTION 67. AMENDMENT. Subsection 1 of section 47-15.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 chapter.
 - 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~~ consumer 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 chapter.
- 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.

SECTION 68. AMENDMENT. Subsection 3 of section 50-06-01.8 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The training, education, employment, and management program 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 training, education, employment, and management program may be administered notwithstanding the requirements of section 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 temporary assistance for needy families, fuel assistance, and food stamp programs. The training, education, employment, and management program may require any participant to cooperate with child support enforcement efforts.

SECTION 69. AMENDMENT. Section 51-14-03.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

51-14-03.2. Application of other provisions. Credit extended by a seller or holder of a revolving charge agreement to a buyer is not subject to chapter ~~13-03~~, 13-03.1; or 47-14.

SECTION 70. AMENDMENT. Subsection 5 of section 53-06.2-11 of the 1997 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 ~~6 2~~ of section ~~53-06.1-04~~ 53-06.1-11.

SECTION 71. AMENDMENT. Subsection 1 of section 54-40-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this section includes ~~and means~~ every city, county, ~~town,~~ park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.

SECTION 72. AMENDMENT. Section 57-15-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-08. ~~Tax~~ General fund levy limitations in cities. The aggregate amount levied for general city purposes may not exceed an amount produced by a levy of thirty-eight mills on the taxable valuation of property in the city; ~~provided, that in cities. Cities~~ with a population of over five thousand ~~they be permitted to~~ may levy an additional one-half of one mill for each additional one thousand population in excess of five thousand, ~~and provided, further, that the~~ up to a maximum levy for general city purposes ~~may not exceed of~~ forty mills; ~~except that a.~~ A city, when authorized by a majority vote of the electors of the city voting on the question ~~upon the submission of such question~~ at a regularly scheduled or special election called for such purpose pursuant to a resolution approved by the governing body of ~~such the~~ city, may increase the maximum mill levy for general city purposes by not more than ten mills; ~~and that in a city supporting a band or public library an additional levy, not to exceed one mill on the taxable valuation of property in such city, may be made for a band, and an additional levy not to exceed four mills on the taxable valuation of property in such city may be made for a public library.~~

⁴⁶ **SECTION 73.** A new subsection to section 57-15-10 of the North Dakota Century Code is created and enacted as follows:

Taxes levied for support of a city band may be levied in an amount not exceeding one mill.

SECTION 74. AMENDMENT. Subdivision b of subsection 2 of section 57-35.3-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. For purposes of determining distributions to and from the counties under section ~~57-38.3-09~~ 57-35.3-09:

⁴⁶ Section 57-15-10 was also amended by section 18 of House Bill No. 1201, chapter 211, and section 2 of Senate Bill No. 2382, chapter 499.

- (1) The balance in the financial institution tax distribution fund and the amount of the payment received by each county from the state shall be determined as if any credit allowed under subdivision a had not been claimed and the full amount of the tax otherwise due had been timely paid;
- (2) The credited amount must be deducted from the distributions that would otherwise be made to and from the county that received the tax overpayment until the sum of the deductions equals the credit; and
- (3) The deductions from distributions made by a county to each distributee must be proportionate to the overpayment of tax received by each distributee.

SECTION 75. AMENDMENT. Section 61-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-13. Operator deemed to be doing business within state - Resident agent. A person shall be deemed doing business within this state when engaged in weather modification operations within the boundaries of this state, and shall, if not already qualified to do business within this state under chapter ~~40-22~~ 10-19.1, prior to conducting such operations, file with the secretary of state an authorization designating an agent for the service of process.

SECTION 76. AMENDMENT. Section 61-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-14. Issuance of license - Fee. The board shall provide, by rule, the procedure and criteria for the issuance of a license. The board, in accordance with its rules, shall issue a weather modification license to each applicant who:

1. Pays a license fee of fifty dollars.
2. Demonstrates competence to engage in weather modification operations, to the satisfaction of the board.
3. Designates an agent for the service of process pursuant to section 61-04.1-13 or chapter ~~40-22~~ 10-19.1.

Each license issued by the board shall be nontransferable and shall expire on December thirty-first of the year of issuance. A license shall be revocable for cause at any time prior to such date if, after holding a hearing upon due notice, the board shall determine that cause for revocation exists. License fees collected by the board shall be paid into the general fund in the state treasury.

SECTION 77. AMENDMENT. Section 61-21-47 of the North Dakota Century Code is amended and reenacted as follows:

61-21-47. Expenditures in excess of maximum levy. If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of one dollar and fifty cents per acre [.40 hectare] in any year, ~~together~~ with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the

affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 61-21-16.

⁴⁷ **SECTION 78. AMENDMENT.** Section 61-35-25 of the North Dakota Century Code is amended and reenacted as follows:

61-35-25. Alternate operation by nonprofit corporation or cooperative. A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the state engineer to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in ~~subsections 4 and 2 of section 10-26-01~~ chapter 10-33 for dissolution, as the case may be, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the state engineer that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the corporation or cooperative in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.
4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a

⁴⁷ Section 61-35-25 was also amended by section 4 of House Bill No. 1140, chapter 544.

nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

SECTION 79. REPEAL. Sections 10-19.1-03, 10-19.1-131, 14-02.1-06, 28-32-22, and chapter 61-24.4 of the North Dakota Century Code are repealed.

Approved March 23, 1999

Filed March 23, 1999

CHAPTER 51

HOUSE BILL NO. 1044

(Legislative Council)
(Judiciary Committee)

TWENTIETH CENTURY REFERENCE CORRECTIONS

AN ACT to amend and reenact section 4-22-47, subsection 4 of section 6-08-16, subsection 7 of section 6-08-16.2, sections 11-19-05, 11-19-11, 14-03-20, subsection 3 of section 16.1-01-09, sections 16.1-11-10, 16.1-11.1-02, 16.1-12-02.1, 16.1-13-05, 16.1-14-20, 16.1-15-45, 21-01-06, 27-06-07, 29-05-31, 32-09.1-07, subsection 5 of section 32-09.1-09, sections 35-22-07, 37-07-03, 37-08-02, subsection 1 of section 43-25-11, sections 47-16-36, 57-09-06, 57-20-05, 57-24-20, 57-24-24, 57-25-05, 57-27-06, 57-27-07, 57-27-08, 57-27-09, 57-28-05, 57-28-07, 57-28-16, 58-16-03, 60-02-13, 61-05-15, 61-06-10, 61-24-03, 61-24.5-06, and 61-24.5-07 of the North Dakota Century Code, relating to corrections of twentieth century statutory references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-47 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-22-47. Consolidation of districts - Petition - Referendum - Conduct of referendum. Two or more districts may be consolidated into one district by compliance with this chapter. A petition for consolidation of soil conservation districts must be filed with the state soil conservation committee and must be signed by at least twenty-five qualified electors living in each district. Upon the filing of a petition, the committee by resolution shall fix a date for a referendum to be held in each district and shall direct the supervisors to cause notice of the referendum to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks before the referendum in a newspaper of general circulation in the districts involved. Only qualified electors living within the district are eligible to vote at the referendum. The notice must state the date of the referendum, identify each polling place for holding the referendum, the time when the polls will open and close, and the question to be submitted to the qualified electors. The notice must be substantially in the following form:

On the _____ day of _____, 19 _____, a referendum will be held at _____ for the purpose of submitting
(Designate polling place or places)
to the qualified electors within _____ soil conservation
(Name of district)
district the question as to whether _____ soil conservation
(Name of districts)
districts embracing the following townships _____
(Designate townships, by number and range)
shall be consolidated into one soil conservation district.

The ballot must be in the following form:

Shall _____ soil conservation districts embracing the
 (Names of districts)
 following townships _____ be
 (Designate townships, by number and range)
 consolidated into one soil conservation district?
 Yes _____
 No _____

The board of supervisors of the district shall appoint the board of election for each polling place. The board of election must consist of one inspector, one judge, and one clerk. Members of the election board are entitled to receive five dollars for their services.

⁴⁸ **SECTION 2. AMENDMENT.** Subsection 4 of section 6-08-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A notice of dishonor may be mailed by the holder, or its agent or representative, of the check 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 Check

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that a check dated _____, 49____,
 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. Within ten days from the
 receipt of this notice, you must pay or tender to _____
 (Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

⁴⁹ **SECTION 3. AMENDMENT.** Subsection 7 of section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁴⁸ Section 6-08-16 was also amended by section 1 of Senate Bill No. 2326, chapter 79, and section 1 of House Bill No. 1243, chapter 80.

⁴⁹ Section 6-08-16.2 was also amended by section 3 of Senate Bill No. 2326, chapter 79, and section 2 of House Bill No. 1243, chapter 80.

State of North Dakota;)
) ss.
 County of _____)

An inquisition was held at _____ in _____ County, state aforesaid, on the _____ day of _____, 19____, before _____ coroner of such county, upon the body of _____ (or person unknown) ~~there lying dead~~, by the jurors whose names are ~~hereto~~ subscribed. The ~~said~~ jurors, upon their oaths, ~~do~~ say (here state when, how, by what person, means, weapon, or accident, the person came to die, and whether feloniously).

~~In testimony whereof, said~~ The jurors have ~~hereunto~~ set their hands signed this return on the indicated day and year aforesaid.

~~Such~~ The coroner shall attest the inquisition shall be attested by the coroner.

⁵⁰ **SECTION 6. 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; ~~greetings:~~

You ~~are hereby authorized to~~ may join in marriage _____ of _____, aged _____ who has _____ been divorced, and _____ of _____, aged _____ who has _____ been divorced; ~~and of.~~ You shall return this license and your certificate you will make due return to my office within five days. Dated at _____ this _____ day of _____, 19____.
 (Seal)

 Clerk of District Court

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 by me at _____, county of _____, State of North Dakota, on the _____ day of _____, 19____.

⁵⁰ Section 14-03-20 was also amended by section 31 of House Bill No. 1275, chapter 278.

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.

SECTION 7. AMENDMENT. Subsection 3 of section 16.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Each copy of any petition provided for in this section, before being filed, must have attached ~~thereto~~ an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
County of _____)
(county where signed)

I, _____, being ~~duly~~ sworn, ~~depose and~~ say that I am a
(circulator)
qualified elector; that I reside at _____;
(address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

(signature of circulator)

Subscribed and sworn to before me this _____ day of on _____,
19____, at _____, North Dakota.

(Notary Seal) _____ (city)

(signature of notary)
Notary Public; ~~North Dakota~~
My commission expires _____

SECTION 8. AMENDMENT. Section 16.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-10. Applicant's name placed upon ballot - Affidavit to accompany petition. Upon receipt by the secretary of state of the petition or certificate of endorsement provided for in section 16.1-11-06 accompanied by the following affidavit, the secretary of state shall place the applicant's name upon the primary election ballot in the columns of the applicant's party as hereinafter provided. The affidavit must be 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 candidate for nomination to the office of _____ to be chosen at the primary election to be held on _____, 19____, and I do hereby request that my name be printed upon the primary election ballot as provided by law, as a candidate of the _____ party for said office.

Candidate's signature

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public, North Dakota

NOTARY SEAL

My Commission Expires _____

SECTION 9. AMENDMENT. Section 16.1-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11.1-02. Application for mail ballots. The county auditor shall mail an application form for a mail ballot to each person 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 best (please print name)

knowledge and belief 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)

ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled. The notice must include a statement in substantially the following format:

The arrangement of candidate names appearing on ballots in your precinct may vary from the published sample ballots, depending upon the precinct and legislative district in which you reside.

SECTION 12. AMENDMENT. Section 16.1-14-20 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-20. Application for presidential ballot by new residents. A person desiring to qualify to vote for presidential electors is not required to register but, not less than ten days in advance of the election, shall make an application in the form of an affidavit executed in duplicate in the presence of the county auditor substantially as follows:

State of North Dakota)
) ss.
County of _____)

I, _____, do solemnly swear that:

1. I am a citizen of the United States.
2. Before becoming a resident of this state, I resided at _____ street, in the (town) (township) (city) of _____, county of _____ in the state of _____.
3. On the day of the next presidential election, I shall be at least eighteen years of age. I have been a resident of this state since ~~the~~ _____ day of _____, 19____, now residing at _____ street, in the (town) (township) (city) of _____, county of _____ in the state of North Dakota.
4. I have resided in _____ precinct for less than thirty days. I believe I am entitled under the laws of this state to vote at the presidential election to be held on ~~the~~ _____ day of November _____, 19____.
5. I ~~hereby make application~~ apply for a presidential election ballot. I have not voted and will not vote otherwise than by this ballot at that election.

Signed _____
(Applicant)

Subscribed and sworn to before me this _____ day of _____, 19____.

Signed _____
(Title and name of officer
authorized to administer oaths)

SECTION 13. AMENDMENT. Section 16.1-15-45 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-45. Form of certificate of election for state officers - Signatures. A certificate of election must be prepared by the secretary of state for each person elected to a state or a district office. The certificate, in substance, must be in the following form:

At an election held on the _____ day of _____, 19____, _____ was elected to the office of _____ of this state for the term of _____ years from the _____ day of _____ in the year, _____, (or, if to fill a vacancy, for the residue of the term ending on the _____ day of _____, 19____), and until a successor is duly elected and qualified.

Given at Bismarck this _____ day of _____, 19____.

The certificate must be signed by the governor and the secretary of state, and must have the great seal of the state affixed thereto, and must be attested by at least one of the other members of the state canvassing board.

SECTION 14. AMENDMENT. Section 21-01-06 of the North Dakota Century Code is amended and reenacted as follows:

21-01-06. Registration of warrants - Rate of interest. Whenever the law authorizes the officers of any taxing district to issue warrants in excess of the amount of cash available in any fund upon which warrants are drawn for payment, the treasurer of ~~such that~~ taxing district, when any ~~such~~ warrant is presented to ~~him~~ the treasurer for payment, if not paid for want of funds, shall endorse the same "Presented for payment ~~this~~ _____ day of _____, 19____, and not paid for want of funds", and thereupon shall enter ~~such the~~ warrant in ~~his~~ the treasurer's warrant register in the order of presentation for registration. The governing body of ~~any such a~~ taxing district authorizing the issuance of warrants in excess of cash on hand shall determine the rate of interest which ~~such the~~ warrants must bear, but in the case of counties and cities ~~such the~~ rate may not exceed eight percent per annum from the date of registration until the expiration of the time specified for presentment for payment.

SECTION 15. AMENDMENT. Section 27-06-07 of the North Dakota Century Code is amended and reenacted as follows:

27-06-07. Certification of transcript. Each transcript prepared by a district court reporter must be certified by the reporter in the following form:

CERTIFICATE OF COURT REPORTER

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF _____)

I, _____, a duly appointed official court reporter,

DESCRIPTION OF DEFENDANT AND VEHICLE

Mo. ___ Day ___ Yr. ___ Race ___ Sex ___ Wt. ___ Ht. ___
Birth date
Hair ___ Dr. Lic: State ___ No. ___ Motor Vehicle:
PSC
Make ___ Reg. No. ___ State ___ Year ___ ICC No. ___

CLAIMED CONDITIONS OF THE VIOLATION

SLIPPERY SURFACE

___ Rain ___ Snow ___ Ice

DARKNESS

___ Night ___ Fog ___ Snow

OTHER TRAFFIC PRESENT

___ Cross ___ Oncoming ___ Pedestrian ___ Same direction

IN ACCIDENT

___ Ped. ___ Vehicle ___ Intersection
___ Right angle ___ Head on ___ Rear end
___ Ran off road ___ Other

Area: ___ School ___ Rural ___ Business
___ Industrial ___ Residential

Highway: ___ 2 Lane ___ 4 Lane ___ 4 Lane Divided
Type

___ Gravel ___ Dirt

OFFENSE CONTRIBUTED MATERIALLY TO ACCIDENT

___ Yes ___ No

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT
(CITY ORDINANCE OR STATE CRIMINAL TRAFFIC VIOLATION)

You are hereby summoned to appear at the time and place designated below
to answer to the charge above indicated to be made against you

Appearance

Before: Municipal Judge-District Ct. _____
_____ A.M./P.M.

Location Month Day Year Time
Dated this ___ day of ___ 19___
Officer _____

PROMISE TO APPEAR

I hereby consent and promise to appear at the time and place specified in the
above summons, the receipt of a copy of which is hereby acknowledged, and I
expressly waive earlier hearing.

Dated this ___ day of ___ 19___
Defendant _____

(STATE NONCRIMINAL TRAFFIC VIOLATION)

You are ~~hereby~~ notified of your right to request, within fourteen days of the date of this citation, a hearing concerning the alleged traffic violation. If you do not request a hearing, the bond is deemed forfeited and the violation admitted. If you are requesting a hearing, date and sign the following portion of this citation AND INCLUDE THE BOND NOTED ON THIS CITATION for the alleged violation. Failure to do so may result in the suspension of your operator's license. You will be notified of the hearing date by the court for the county in which this citation was issued.

REQUEST FOR HEARING

I ~~hereby~~ submit the designated bond and request a hearing on the alleged traffic violation and promise to appear at the time and date specified in the summons issued by the court for the county in which the citation was issued.

Dated this _____ day of _____ 19____
 Defendant _____

⁵¹ **SECTION 17. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee ~~must~~ shall serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee ~~must~~ shall retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee ~~must~~ shall release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant ~~must~~ shall provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must

⁵¹ Section 32-09.1-07 was also amended by section 1 of Senate Bill No. 2194, chapter 302.

state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

The garnishee summons and notice to defendant must be substantially in the following form:

| | | |
|-----------------------|-----------|-----------------------|
| State of North Dakota |) | |
| |) | In _____ Court |
| County of _____ |) | _____ |
| |) | |
| _____ | | |
| | Plaintiff | |
| against | | Garnishee Summons and |
| _____ | | Notice to Defendant |
| | Defendant | |
| and | | |
| _____ | | |
| | Garnishee | |

The State of North Dakota to the above-named Garnishee:

You ~~must~~ shall serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$ _____. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$ _____.

The defendant ~~must~~ shall provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$ _____. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You ~~must~~ shall retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of 180 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within 180 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

includes military retirement pay. "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld. If the garnishee summons was served upon you at a time when earnings from a prior completed pay period were owing but not paid, complete the following disclosure for earnings from both the past pay period and the current pay period.

- a. Enter on the line below the amount of disposable earnings earned or to be earned by the defendant within the defendant's pay periods which may be subject to garnishment.

- b. Enter on the line below forty times the hourly federal minimum wage times the number of workweeks within the defendant's pay periods which may be subject to garnishment. When pay periods consist of other than a whole number of workweeks, each day of a pay period in excess of the number of completed workweeks must be counted as a fraction of a workweek equal to the number of workdays divided by the number of workdays in the normal workweek.

- c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a.

- d. Enter on the line below 25 percent of line a.

- e. Enter on the line below the lesser of line c and line d.

- f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).

- g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.

- h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.

2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.

3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.

4. Setoff. Enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State each person's name and address and the nature of that person's claim, if known. (Any assignment of wages made by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

6. Enter on the line below the total of lines 4 and 5.

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of lines 1(h), 2, and 3.

8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

- 9. Enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.

Signature _____

Authorized Representative
of Garnishee

_____ Title

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

SECTION 19. AMENDMENT. Section 35-22-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-22-07. Notice of sale - Form. The notice of sale must be in substantially the following form:

Notice is hereby given that that certain mortgage, executed and delivered by _____, mortgagor, to _____, mortgagee, dated the _____ day of _____, 19____, and filed for record in the office of the register of deeds of the county of _____ and state of North Dakota on the _____ day of _____, 19____, and recorded in book _____ of _____ at page _____ (and assigned by said mortgagee to _____), will be foreclosed by a sale of the premises in such mortgage and hereinafter described at the front door of the courthouse in the county of _____ and state of North Dakota at the hour of _____ o'clock ___ m., on the _____ day of _____, 19____, to satisfy the amount due upon such mortgage on the day of sale. The premises described in such mortgage and which will be sold to satisfy the same are described as follows: (here insert description and street address, if any).

There will be due on such mortgage at the date of sale the sum of _____ dollars.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 20. AMENDMENT. Section 37-07-03 of the North Dakota Century Code is amended and reenacted as follows:

37-07-03. Enlisted men to sign contract of enlistment and subscribe to oath. ~~Men~~ Individuals enlisting in the national guard of this state shall sign an enlistment contract and subscribe the following oath of enlistment:

I ~~do hereby~~ acknowledge to have voluntarily enlisted this _____ day of _____, 19____, as a soldier in the national guard of the United States and of the state of North Dakota, for the period of three years (or one year _____,) under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear

true faith and allegiance to the United States of America and to the state of North Dakota, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and of the governor of the state of North Dakota, and of the officers appointed over me according to law, the rules of war, and the uniform code of military justice.

SECTION 21. AMENDMENT. Section 37-08-02 of the North Dakota Century Code is amended and reenacted as follows:

37-08-02. Enlistments in national guard reserve - Contract - Oath. ~~Men~~ Individuals duly qualified for enlistment in the active national guard may enlist in the national guard reserve for a period of one year or three years under ~~such the~~ regulations as prescribed by the secretary of defense ~~shall prescribe~~. Upon enlisting in ~~such the~~ reserve, each ~~man~~ individual shall subscribe the following enlistment contract and take the oath therein specified:

I ~~do hereby~~ acknowledge to have voluntarily enlisted ~~this~~ _____ ~~day of on~~ _____, 19____, as a soldier in the national guard of the United States and of the state of North Dakota, to serve in the reserve thereof, or in the active national guard of the United States and said state if transferred thereto, for a period of one year (or three years), unless sooner discharged by proper authority, and I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of North Dakota, and that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the president of the United States and the governor of the state of North Dakota, and of the officers appointed over me according to law, the rules of war, and the uniform code of military justice.

SECTION 22. AMENDMENT. Subsection 1 of section 43-25-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Whenever accusations under section 43-25-10 are filed, the board shall set a day for hearing and the secretary-treasurer of the board shall transmit to the accused a copy of all charges filed relating to the accusations, and shall notify in writing the accused that on the day fixed for the hearing, which may not be less than ten days from the date of notice, the accused may appear or show cause why the accused's license to practice massage in this state should not be revoked, suspended, or annulled. For the purpose of this type of hearing, the board may require by subpoena the attendance of witnesses, to administer oaths and hear testimony and receive evidence, either oral or documentary, for and against the accused, and the accused has the right at the hearing to cross-examine the witnesses, to produce defense witnesses, and to appear personally or by counsel. The notice provided for in this section must be substantially in the following form:

To _____ charges have been filed with the secretary-treasurer of the North Dakota Board of Massage against you as a practicing _____ in the state of North Dakota. A
(Massage Therapist)

copy of the charges is attached. The board has fixed ~~the~~ _____ ~~day of~~ _____, 19____, at _____ o'clock

_____ at _____ in _____ for a hearing on ~~such the~~ charges, at which time and place you are to appear before the board, and show cause, if you can, why your license to practice massage in the state of North Dakota should not be revoked, suspended, or annulled. At the same time and place the board will hear testimony and receive evidence, either oral or documentary, or both, for and against you relating to the charges.

Dated at _____ this _____ day of _____, 19____.

Secretary-treasurer of the
North Dakota Board of Massage

SECTION 23. AMENDMENT. Section 47-16-36 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-16-36. Duty of lessee to have terminated or forfeited lease released - Publication notice - Satisfaction of lease to be recorded - Notice to real property owner - Remedies. When any oil, gas, or other mineral lease ~~heretofore or hereafter~~ given on real property situated in any county of North Dakota and recorded therein ~~shall terminate~~ terminates or ~~become~~ is forfeited it ~~shall be~~ is the duty of the lessee, ~~his the lessee's~~ the lessee's successors or assigns, within fifteen days after the date of the termination or forfeiture of any ~~such~~ the lease, to have ~~such the~~ the lease surrendered in writing, ~~such the~~ the surrender to be signed by the party making the same, acknowledged, and placed on record in the county where the leased real property is situated without cost to the owner thereof. If the ~~said~~ lessee, ~~his the lessee's~~ the lessee's successors or assigns, ~~shall fail or neglect~~ fails or neglects to execute and record ~~such the~~ the surrender within the time provided for, then the owner of ~~said the~~ the real property may serve upon ~~said the~~ the lessee, ~~his the lessee's~~ the lessee's successors or assigns of record, in person or by registered or certified mail, at ~~his the lessee's~~ the lessee's last known address, or if the post-office address is not shown of record then by publication once a week for three consecutive weeks in a newspaper of general circulation in the county where the real property is situated, a notice in writing in substantially the following form:

To _____: I, the undersigned, owner of the following described land situated in _____ County, North Dakota, ~~to wit:~~ (description of land) upon which a lease dated _____ day of _____, 19____, was given to _____ ~~do hereby~~ notify you that ~~such the~~ the lease has terminated or become forfeited by breach of the terms thereof, that I ~~hereby~~ elect to declare and do declare the ~~said~~ lease forfeited and void and that, unless you do, within twenty days from this date, notify the register of deeds of ~~said the~~ the county as provided by law that ~~said the~~ the lease has not been forfeited, I will file with the ~~said~~ register of deeds a satisfaction of lease as provided by law, and I ~~hereby~~ demand that you execute or have executed a proper surrender of ~~said the~~ the lease and that you put the same of record in the office of the register of deeds of ~~said the~~ the county within twenty days from this date.

Dated this _____ day of _____, 19____.

The owner of ~~said the~~ the real property may after twenty days from the date of service, registration, or first publication of ~~said the~~ the notice, file with the register of deeds of the county where ~~said the~~ the real property is situated a satisfaction of lease setting forth that the affiant is the owner of ~~said the~~ the real property, that the lease has terminated or that the lessee, or ~~his the lessee's~~ the lessee's successors or assigns, has failed ~~and~~

~~or~~ neglected to comply with the terms of ~~said~~ the lease, reciting the facts constituting ~~such~~ the failure and that the same has been forfeited and is void, and setting out in ~~said~~ satisfaction of lease a copy of the notice served, as above provided and the manner and time of the service thereof. If the lessee, ~~his~~ the lessee's successors or assigns, ~~shall within such twenty days after service, give~~ gives notice in writing within twenty days after service to the register of deeds of the county where ~~said~~ the real property is located that ~~said~~ the lease has not been forfeited and that ~~said~~ the lessee, ~~his~~ the lessee's successors or assigns, still claim that ~~said~~ the lease is in full force and effect, then the ~~said~~ satisfaction of lease ~~shall~~ may not be recorded but the register of deeds shall notify the owner of the real property of the action of the lessee, ~~his~~ the lessee's successors or assigns, and the owner of the real property ~~shall be~~ is entitled to the remedies now provided by law for the cancellation of ~~such~~ the disputed lease. If the lessee, ~~his~~ the lessee's successors or assigns, ~~shall not~~ fails to notify the register of deeds, as above provided, then the register of deeds shall record ~~said~~ the satisfaction of lease and thereafter the record of the ~~said~~ the lease ~~shall is~~ is not be notice to the public of the existence of ~~said~~ the lease or of any interest therein, or rights thereunder, and ~~said~~ the record ~~shall may~~ may not be received in evidence in any court of the state on behalf of the lessee, ~~his~~ the lessee's successors or assigns, against the lessor, ~~his~~ the lessor's successors or assigns.

SECTION 24. AMENDMENT. Section 57-09-06 of the North Dakota Century Code is amended and reenacted as follows:

57-09-06. Assessor's statement and return to auditor. The assessor shall add and note the amount of each column in ~~his~~ the assessor's assessment books after making the corrections ordered by the township board of equalization. ~~He~~ The assessor also shall make in each book a tabular statement showing the footings of the several columns upon the page, and shall add and set down under the respective headings the total amount of the several columns. On or before the fourth Monday in April in each year, ~~he~~ the assessor shall make returns to the county auditor of ~~his~~ the assessment books, and shall deliver ~~therewith~~ the lists and statements of all persons assessed, all of which must be filed and preserved in the office of the county auditor. ~~Such~~ The returns must be verified by ~~his~~ the assessor's affidavit substantially in the following form:

STATE OF NORTH DAKOTA)
) ss.
 County of)

I, _____, assessor of _____, ~~do~~ solemnly swear that the book to which this is attached contains a full list of all property subject to taxation in _____ so far as I have been able to ascertain, and that the assessed value set down in the columns opposite the several kinds and descriptions of property in each case is fifty percent of the true and full value of ~~such~~ the property, to the best of my knowledge and belief, except where and as corrected by the township board of equalization, and that the footings of the several columns in ~~said~~ the book, and the tabular statement returned herewith, are correct, as I verily believe.

 Assessor

Subscribed and sworn to before me this _____ day of _____, 19____.

Auditor of _____ County, North Dakota

SECTION 25. AMENDMENT. Section 57-20-05 of the North Dakota Century Code is amended and reenacted as follows:

57-20-05. Certificate of county auditor to tax list. The county auditor shall attach to each tax list his the auditor's certificate in the following form:

STATE OF NORTH DAKOTA)
County of) ss.

I, _____, auditor of _____ county County, state of North Dakota, hereby certify that the following is a correct list of the taxes levied on the real and personal property in the _____ (here name the taxing district or municipality) for the year _____.

Witness my hand and official seal this _____ day of _____, 19____.

(SEAL)

County Auditor-

SECTION 26. AMENDMENT. Section 57-24-20 of the North Dakota Century Code is amended and reenacted as follows:

57-24-20. Form of certificate of sale. The county auditor shall execute to the purchaser a certificate of sale which must be substantially in the following form:

COUNTY CERTIFICATE OF SALE FOR TAXES

I, _____, auditor for the county of _____, in the state of North Dakota, hereby do certify that the following described real estate in said the county and state; to wit: _____ (describing the same), was, on the _____ day of _____ A.D. 19____, sold by me in the manner provided by law for the delinquent taxes of the year 19____ thereon, amounting to _____ dollars, including interest and penalty and costs allowed by law, to _____ of _____, for the sum of _____ dollars, he being the bidder who agreed to accept the lowest rate of interest thereon from the date of sale on the total amount of such the taxes, penalties, and costs as paid by him, and that said the rate of interest which said the purchaser so agreed to accept was _____ percent per annum.

And I further certify that unless redemption is made of said the real estate in the manner provided by law the said _____ or his assignee, will be entitled to a deed therefor on and after the _____ day of _____, 19____, on the surrender of this certificate.

In witness whereof I have hereunto set my hand and seal ~~this~~ _____
~~day of~~ on _____, 19__.

(SEAL)

 Auditor

SECTION 27. AMENDMENT. Section 57-24-24 of the North Dakota Century Code is amended and reenacted as follows:

57-24-24. Form of subsequent tax sale certificate. The county auditor shall execute to the payer of subsequent taxes a subsequent tax sale certificate which must be substantially in the following form:

SUBSEQUENT TAX SALE CERTIFICATE

_____ County, North Dakota

I, _____, county auditor of _____ County in the state of North Dakota, ~~hereby do~~ certify that at the annual tax sale of real estate held on the _____ day of December _____, 19__, the following described real estate ~~to wit:~~ _____ was sold for the taxes of the year _____ to _____ of _____ for the aggregate sum of _____ dollars (\$_____), and there was issued to ~~such~~ the purchaser tax sale certificate No. _____ and that thereafter, the owner of ~~said~~ the tax sale certificate paid subsequent taxes upon said real estate for the year _____ which payment was made on _____ and it is ~~hereby~~ certified that there is due ~~him~~ the owner on account of subsequent taxes for said year, the sum of _____ dollars (\$_____), together with interest at nine percent (9%) per annum from _____, and that unless redemption ~~shall be~~ is made from this subsequent tax sale certificate within three (3) years from December _____, 19__, ~~he~~ the owner will be entitled after due notice given, to a tax deed conveying to ~~him~~ the owner the ~~said~~ real estate.

Given under my hand and the seal of the county auditor of _____ County, North Dakota, ~~this~~ _____ day of on _____, 19__.

 County Auditor of _____ County

⁵² **SECTION 28. AMENDMENT.** Section 57-25-05 of the North Dakota Century Code is amended and reenacted as follows:

57-25-05. Procedure on payment of tax or redemption of portion of tract. Upon payment by the petitioner of the amount as finally apportioned, a tax receipt or certificate of redemption, or both, as the case may be, must be issued to ~~such~~ the petitioner by the county auditor. If there are outstanding tax certificates, the proper amount of the proceeds of ~~such~~ the redemption must be paid to the holders of ~~such~~ the certificates. The original certificate or certificates must be deposited with, and canceled by, the county auditor, and ~~he~~ the auditor shall issue in lieu thereof a tax

⁵² Section 57-25-05 was also amended by section 20 of Senate Bill No. 2334, chapter 503.

sale certificate, which must be entitled "substitute tax sale certificate", and which must be in substantially the following form:

SUBSTITUTE TAX SALE CERTIFICATE

I, _____, auditor of the county of _____ in the state of North Dakota, ~~do hereby~~ certify that the following described real estate situated in ~~said the~~ county and state ~~to wit:~~ _____, together with other real estate, on ~~the~~ _____ day of _____, 19____, was sold by me in the manner provided by law for the delinquent taxes thereon for the year _____ to _____, he being the bidder who agreed to accept the lowest rate of interest thereon from the date of sale upon the amount of taxes, penalties, and interest paid by him, that the rate of interest which ~~said the~~ purchaser agreed to accept was _____ percent per annum, that thereafter redemption was made from said tax sale of a portion of the real estate then sold to ~~said the~~ purchaser, that redemption of the above described real estate was not made, and I further certify that unless redemption of ~~such the~~ real estate is made in the manner provided by law the said _____ or his assigns will be entitled to a deed of the property above described ~~on and after the~~ _____ day of _____, 19____, on the surrender of this certificate, and I further certify that there remains due and unpaid upon this certificate the sum of \$_____ together with interest thereon at _____ percent per annum from _____ day of _____, 19____.

In witness whereof I have hereunto set my hand and the seal of the county auditor of ~~said the~~ county this _____ day of _____, 19____.

County Auditor of _____ County

Such substitute certificate has the same force and effect as the original certificate as to property covered thereby. The county treasurer and county auditor shall make the proper entries in the tax records of their offices showing the payment of the taxes and the cancellation of the original certificate and the issuance of the substitute tax certificate.

SECTION 29. AMENDMENT. Section 57-27-06 of the North Dakota Century Code is amended and reenacted as follows:

57-27-06. Form of tax deed. A tax deed must be substantially in the following form:

TAX DEED

Whereas _____, did on ~~the~~ _____ day of _____, 19____, produce to the undersigned _____, county auditor of the county of _____, in the state of North Dakota, a certificate of tax sale, No. _____, bearing the date of ~~the~~ _____ day of _____, 19____, signed by _____, who on that date was the county auditor of ~~said the~~ county, from which it appears that _____ did on ~~the~~ _____ day of _____, 19____, purchase at public auction at the regular tax sale of that year the tract, parcel, or lot of land in this indenture described, and which was struck off and sold to _____ for the sum of _____ dollars, that being the total amount of taxes, penalties, and costs charged against ~~said the~~ land, including any personal taxes specified in the lists and advertisement, constituting a lien thereon for the year, or years, 19____; ~~to wit:~~

_____ (describe lands) _____, and that ~~the said~~ _____ did at the time and place of ~~said~~ public auction, as a part of his bid, agree to accept the lowest rate of interest on the amount of ~~such~~ the taxes, penalties, and costs so paid by him; ~~to wit:~~ the rate of _____ percent per annum, and it appearing that ~~the said~~ _____ is the legal owner of the ~~said~~ certificate of tax sale, and the time allowed by law for redeeming the land herein described having expired, and proof of legal notice of the expiration of the period of redemption having been filed in the office of the county auditor prior to the maturity of ~~such~~ the certificate as provided by law, and ~~said~~ the land not having been redeemed from ~~such~~ the sale pursuant to law, and ~~the said~~ _____ having demanded a deed for the tract of land mentioned in ~~said~~ the certificate, and it appearing that ~~said~~ the lands were legally liable for taxation, and had been assessed and properly charged on the tax book or duplicate for the year or years ~~19~~____, and that ~~said~~ the lands had been advertised legally for taxes and were sold on the _____ day of _____, ~~19~~____, to ~~the said~~ _____.

Now, therefore, this indenture, made ~~this~~ _____ day of ~~on~~ _____, ~~19~~____, between the state of North Dakota by _____ as county auditor of the ~~said~~ county, party of the first part, and ~~the said~~ _____, party of the second part:

WITNESSETH, That the ~~said~~ party of the first part, for and in consideration of the premises and the amount so bid and paid at ~~such~~ the tax sale, has granted, bargained and sold, and by these presents does grant, bargain, sell, and convey unto the ~~said~~ party of the second part, ~~his~~ the party's heirs and assigns, forever, the tract or parcel of land mentioned in ~~said~~ the certificate and described as follows ~~to wit:~~ _____ in _____ County, state of North Dakota.

TO HAVE AND TO HOLD ~~said~~ the mentioned lands, with the appurtenances thereto belonging, to the ~~said~~ party of the second part, ~~his~~ the party's heirs and assigns, forever, in as full and ample manner as the ~~said~~ county auditor of the ~~said~~ county of _____ is empowered by law to sell the same.

IN TESTIMONY WHEREOF, ~~the said~~ _____, as county auditor of the ~~said~~ county of _____, North Dakota, hereunto has set his hand and the seal of the ~~said~~ county, on ~~the~~ _____ day of _____, ~~19~~____.

(SEAL)

County Auditor of _____
County, North Dakota:

SECTION 30. AMENDMENT. Section 57-27-07 of the North Dakota Century Code is amended and reenacted as follows:

57-27-07. Assignment of certificate for land bid in by county. At any time after any property has been bid in for the county, unredeemed, and not subject to a tax deed to the county, the county auditor may assign all of the rights of the county in the property to any person, other than the county auditor, county treasurer, or their deputy or clerk. The assignee shall pay the amount that was bid for the property, interest from the date of the tax sale at the rate of six percent per annum, and the amount of any later delinquent taxes. The county auditor shall execute an assignment for each certificate which may be in substantially the following form:

I, _____, auditor of the county of _____, state of North Dakota, ~~hereby do~~ certify that at the sale of real estate for the delinquent taxes thereon for the county of _____ and state aforesaid, which sale was held at the _____ in ~~said the~~ county of _____ on the _____ day of _____, A.D. 49__, for the taxes of the year _____, the following described piece or parcel of land situated in ~~said the~~ county of _____, state of North Dakota; ~~to wit:~~ (insert description) was offered for sale to the best bidder, and no one bidding upon ~~such the~~ offer, the same then was bid in for the county for the sum of _____ and the same still remaining unredeemed, and _____, on this day, having paid into the treasury of ~~said the~~ county, the amount for which the same was bid in with interest thereon, and all subsequent delinquent taxes, amounting in all to _____ dollars, therefore, in consideration thereof, and pursuant to law, I ~~hereby do~~ assign and convey all the ~~right~~ rights, title, and interest of ~~said the~~ county to ~~said the~~ piece or parcel of land acquired therein at ~~said the~~ sale to ~~the said~~ _____, his heirs and assigns, subject to redemption as provided by law.

And I further certify that unless redemption of ~~said the~~ real estate is made in the manner provided by law, ~~the said~~ _____ or his assigns, will be entitled to a deed therefor on and after the expiration of the time for redemption, as provided by law, and upon the surrender of this certificate.

In witness whereof I ~~hereunto~~ have set my hand and seal ~~this~~ _____ day of on _____, 49__.

County Auditor of _____
County, North Dakota:

SECTION 31. AMENDMENT. Section 57-27-08 of the North Dakota Century Code is amended and reenacted as follows:

57-27-08. Provision of deed in case grantee is assignee of county. In case the land has been bid in for the county, and the certificate has been assigned to another holder, the language of ~~such the~~ deed inappropriate to ~~such the~~ sale must be stricken out, and the following inserted in lieu thereof:

Offered for sale to the bidder who agreed to accept the lowest rate of interest on the amount of ~~such the~~ taxes, penalties, and costs charged against the land, the following described tract or parcel of real property; ~~to wit:~~ _____ (describe property) _____ which property was returned delinquent for the nonpayment of taxes for the year 49__, amounting to _____ dollars, including penalty and costs charged against ~~said the~~ land, including personal property taxes specified in the list and in the advertisement, constituting the lien thereon, and no one bidding upon ~~such the~~ offer an amount equal to that for which ~~said the~~ piece or parcel of land was subject to be sold, the same was bid in for the county. And it appearing by ~~said the~~ certificate that the right, title, and interest of the county in ~~said the~~ tract or parcel of land acquired at ~~said the~~ sale, on the _____ day of _____, 49__, was assigned to _____, for the sum of _____ dollars, that being the amount due thereon at that time.

SECTION 32. AMENDMENT. Section 57-27-09 of the North Dakota Century Code is amended and reenacted as follows:

57-27-09. Provision of deed in case of assignment by original purchaser. In case the certificate of tax sale is assigned by the purchaser, then a statement must be inserted in ~~such~~ the tax deed briefly describing the assignment of ~~such~~ the certificate, in substantially the following form:

Which ~~said~~ the certificate of tax sale issued to ~~said~~ _____, purchaser at ~~said~~ the tax sale, and the ~~right~~ rights, title, and interest of the ~~said~~ purchaser in ~~said~~ the tract or parcel of land acquired ~~thereby~~ at ~~said~~ the sale, on ~~the~~ _____ day of _____, 19____, was assigned to _____.

⁵³ **SECTION 33. AMENDMENT.** Section 57-28-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-05. Form of notice for service by certified mail. The notice of the expiration of the period of redemption which the county auditor is required to serve by certified mail must be substantially in the following form:

NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION

To _____, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in ~~said~~ the real estate:

I, _____, county auditor of _____ County, North Dakota, ~~hereby~~ give notice that the real estate hereinafter described, at the annual tax sale held in the county on ~~the~~ _____ of December _____, 19____, was offered for sale for delinquent taxes against it for the year _____ and was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of each of ~~said~~ the tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of ~~such~~ the county, and unless redemption is made from each of ~~said~~ the tax sale certificates on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to ~~said~~ the real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of ~~said~~ the county. There is given herewith the description of ~~such~~ the parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem ~~such~~ the real estate from ~~such~~ the original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice.

⁵³ Section 57-28-05 was also amended by section 25 of Senate Bill No. 2334, chapter 503.

~~Said~~ The property is described as follows, with the amount required to redeem ~~set~~ out opposite each description; ~~to~~ wit:

Given pursuant to authority of law this _____ day of _____, 49__.

County auditor of _____ County, North Dakota.

⁵⁴ **SECTION 34. AMENDMENT.** Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption to be served by publication must be substantially in the following form:

I, _____, county auditor, of _____ County, North Dakota, ~~hereby do~~ give notice that the real estate hereinafter described was sold to the county at the annual tax sale on December _____, 49__, for delinquent taxes, that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of ~~said~~ the tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county, and that unless redemption ~~shall be~~ is made from ~~such~~ the tax sale, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lienholders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to ~~such~~ the real estate whatsoever. The following is a list of the real estate sold at ~~such~~ the tax sale on which the period of redemption will expire on October first. Opposite each description of ~~such~~ the real estate appears any street address of the property, the name of the owner of the record title thereof, and the amount which must be paid to redeem from ~~such~~ the tax sale before the period of redemption expires. ~~Said~~ The sum includes the amount for which ~~said~~ the land was sold, together with subsequent delinquent taxes for _____ and prior years, and interest, penalties, and cost of service. (List descriptions, names of owners, and amount necessary to redeem.)

Given pursuant to authority of law this _____ day of _____, 49__.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 35. AMENDMENT. Section 57-28-16 of the North Dakota Century Code is amended and reenacted as follows:

⁵⁴ Section 57-28-07 was also amended by section 27 of Senate Bill No. 2334, chapter 503.

57-28-16. Form of deed to purchaser. The deed which the county shall execute and deliver to the purchaser must be substantially in the following form:

COUNTY DEED

This indenture made this _____ day of _____, _____, between the county of _____, North Dakota, party of the first part, and _____, party of the second part, witnesseth:

WHEREAS, the real property hereinafter described was acquired by the county through tax deed proceedings for the nonpayment of taxes levied and extended against ~~said~~ the property for the years of 19__ to 19__ inclusive, with interest and penalties, amounting to the sum of _____ dollars; and

WHEREAS, ~~said~~ the real property was offered for sale, and sold, pursuant to authority of law, on the _____ day of _____, 19__, and at ~~said~~ the sale, ~~said~~ the second party became the purchaser of the whole thereof, for the sum of _____ dollars, which has been paid in full;

NOW, THEREFORE, the ~~said~~ county as party of the first part, in consideration of the premises, and pursuant to authority of law, hereby does grant, bargain, sell, and convey to the second party, ~~his~~ the second party's heirs and assigns, that certain real property situated in ~~said~~ the county of _____, North Dakota, described as follows; ~~to wit~~:

To have and to hold the above described real property with all of the appurtenances thereunto belonging to the ~~said~~ party of the second part, _____ heirs and assigns forever.

IN WITNESS WHEREOF _____ and _____, as chairman of the board of county commissioners and county auditor, respectively, of said county, hereby do set their hands the day and year first above written and do cause the seal of said county to be affixed thereto.

_____ County,
North Dakota-

Chairman, board of county commissioners-

County auditor-

STATE OF NORTH DAKOTA

County of _____

On this _____ day of _____, 19__, personally appeared before me, a notary public within the aforesaid county and state, _____ and _____, to me personally known to be the chairman of the board of county commissioners and the auditor, respectively, of said county, and acknowledged to me that they executed the foregoing deed for and on behalf of said county.

My commission expires _____. Notary Public, for _____ County, North Dakota.

SECTION 36. AMENDMENT. Section 58-16-03 of the North Dakota Century Code is amended and reenacted as follows:

58-16-03. Assessment and levy upon property - Form. The board of township supervisors shall assess and levy upon each lot or parcel of land along which the sidewalk has been built by the township a sum sufficient to cover the cost of the construction thereof, and shall assess and levy against each lot or parcel of land benefited by the installation of streetlights by the township. The assessment must be in substantially the following form:

The board of supervisors of the township of _____ ~~does hereby assess~~ assesses upon and ~~levy~~ levies against the several parcels of land hereinafter described the respective sums of money set against each lot or parcel. This assessment is made to defray the cost of a _____ sidewalk or streetlights along the _____ side of _____ to _____ in accordance with the resolution of the board of township supervisors passed the _____ day of on _____, 19____, and duly published in _____ on the _____ days of _____, 19____. The amount assessed against and levied upon each lot or parcel being the amount that it cost to construct or reconstruct ~~such~~ the sidewalk along and fronting upon the same lot or parcel of land. When streetlights are installed the cost of ~~such~~ the installation ~~shall~~ must be assessed and levied against all lots or parcels of land that benefit from the streetlights.

| Name of Owner, if known | Description of land | | Amount | |
|-------------------------|---------------------|-------|---------|-------|
| | Lot | Block | Dollars | Cents |
| | | | | |

Done at a meeting of the board of supervisors of the township of _____ this _____ day of on _____, 19____.

Chairman

Attest:

Township Clerk:

SECTION 37. AMENDMENT. Section 60-02-13 of the North Dakota Century Code is amended and reenacted as follows:

60-02-13. Purchase by warehouseman - Form of receipt. There may be printed on each warehouse receipt issued by a warehouseman a receipt executed by the owner for use in case the grain represented thereby is purchased by ~~such~~ the warehouseman. The warehouseman shall record ~~such~~ the purchase, as to the amount paid per bushel, on the stub record or copy of its warehouse receipt books. ~~Such~~ The receipt ~~shall~~ must be in substantially the following form:

Received from _____, _____ dollars and _____ cents net, in full payment for the grain represented by this warehouse receipt. Gross price per bushel _____, storage per bushel _____, net price per bushel _____. I ~~hereby~~ certify that I am the owner of the grain for

which this receipt was issued, and that there are no liens, chattel mortgages, or other claims against the grain represented by this receipt.

Dated _____ 19₁ __. Signed _____ Owner.

Nothing in this section contained ~~shall~~ may be construed to affect in any manner the conditions of the storage contract specified in sections 60-02-17 and 60-02-18.

SECTION 38. AMENDMENT. Section 61-05-15 of the North Dakota Century Code is amended and reenacted as follows:

61-05-15. Form of notice of election. The notice of election provided for section 61-05-14 ~~shall~~ must be substantially in the following form:

NOTICE OF ELECTION

Notice is ~~hereby~~ given that on the _____ day of _____, 19____, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the state engineer as _____ irrigation district, the question as to whether ~~or not~~ the order of the state engineer establishing ~~such the~~ irrigation district ~~shall be~~ is approved. Notice is ~~hereby~~ given that the lands of ~~such the~~ district are fully described in the order of the state engineer establishing the district and filed in the state engineer's office ~~at the state capitol~~ in Bismarck, North Dakota, and in the office of the county auditor of _____ County, North Dakota. The ballot ~~will~~ must be in the following form:

FOR IRRIGATION DISTRICT

Yes
No

Notice is further given that a board consisting of _____ directors will be elected, one from each district division, who will serve as provided by law after the establishment of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and have the elector's name appear on the ballot must file the elector's request in writing with the state engineer not less than twenty days before the ~~said~~ election.

Dated this _____ day of _____ 19₁ ____.
Signed _____
State Engineer.

SECTION 39. AMENDMENT. Section 61-06-10 of the North Dakota Century Code is amended and reenacted as follows:

61-06-10. Notice of election after district is organized - Contents - Form. Within thirty-five days of, but at least twenty-five days prior to, any regular or special election held in an irrigation district, the secretary of the board of directors shall ~~cause~~ publish a notice of the election ~~to be published~~ in the newspaper or newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The notice ~~shall~~ must specify the matters to be voted upon, the location of the polling place or places, and the time of their opening and closing. ~~Such~~ The notice ~~shall~~ must be in substantially the following form:

~~NOTICE hereby~~ Notice is given that on the _____ day of _____, 49__, an election will be held at _____ (here designate the polling place) for the purpose of electing _____ members of the board of directors and for the purpose of voting upon ~~such the~~ questions as shall be submitted by the directors of the district. Polls will be opened at one p.m. and will be closed at five p.m. of that day. Notice is further given that any elector desiring to have the elector's name appear on the ballot must file a request in writing with the secretary of the district not less than twenty days before the election.

SECTION 40. AMENDMENT. Section 61-24-03 of the North Dakota Century Code is amended and reenacted as follows:

61-24-03. Election of directors of the Garrison diversion conservancy district.

A director of the Garrison diversion conservancy district ~~shall~~ must be nominated and elected in each county in the district. Any person who is a resident and qualified elector of the county who aspires to the office of director of the Garrison diversion conservancy district shall, not more than seventy days or less than sixty days and before four p.m. of the sixtieth day ~~prior to~~ before any primary election preceding a general election at which a director of the district is to be elected, present to the county auditor a petition giving that person's name, post-office address, the title of the office "Director of the Garrison Diversion Conservancy District", and containing the signatures of not less than fifty nor more than three hundred qualified electors of the county to which each signer has added the signer's residence with street number, if any, and the date of signing.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA,
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 nomination to the office of director of the Garrison Diversion Conservancy District to be chosen at the primary election to be held on the _____ day of _____, 49__, 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 the~~ the office.

Subscribed and sworn to before me ~~this~~ _____ day of on _____, 49__.

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 two candidates receiving the highest number of votes if more than two are running ~~shall be~~ are nominated.

The names of the candidates so nominated at the primary election must be placed on the no-party ballot at the ensuing general election and the candidate receiving the highest number of votes ~~shall be~~ duly is elected.

At the primary and general elections votes must be canvassed, returned certified, and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers.

SECTION 41. AMENDMENT. Section 61-24.5-06 of 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 and before four p.m. of the sixtieth day 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 that person's name, post-office address, and the title of the office of the southwest water authority to which that person is seeking election. The petition must contain the signatures of not less than 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 the petition shall include with that signer's name that signer's mailing address.

The petition must be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA)
County of) ss.
)

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~~ the 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 office of director. The candidate receiving the highest number of votes 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 42. AMENDMENT. Section 61-24.5-07 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-07. Election of city directors of the southwest water authority.

Any person who is a resident and qualified elector of the city of Dickinson who aspires to the office of director of the southwest water authority shall, at least sixty days and before five p.m. on the sixtieth day ~~prior to~~ before the ~~holding of the~~ election, file with the city auditor a petition signed by not less than ten percent of the number of

AERONAUTICS

CHAPTER 52

SENATE BILL NO. 2085

(Transportation Committee)

(At the request of the Aeronautics Commission)

AIRMEN REGISTRATION REPEAL

AN ACT to repeal section 2-05-10 of the North Dakota Century Code, relating to the registration of airmen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 2-05-10 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 4, 1999

Filed March 5, 1999

AGRICULTURE

CHAPTER 53

SENATE BILL NO. 2328

(Senators Heitkamp, D. Mathern, Thane)

INDUSTRIAL HEMP RESEARCH

AN ACT to amend and reenact section 4-05.1-05 of the North Dakota Century Code, relating to industrial hemp and alternative industrial use crops research.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-05. North Dakota state university main research center. The North Dakota state university main research center must be located on the campus of North Dakota state university of agriculture and applied science. The center is the administrative location of the agricultural experiment station. The center shall conduct research and coordinate all research activities of the agricultural experiment station. The center may, if allowed under federal law, conduct baseline research, including production and processing in conjunction with the research and extension centers of the state, regarding industrial hemp and other alternative industrial use crops. The research must have as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for an enhancement of the quality of life, sustainability of production, and protection of the environment.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 54**HOUSE BILL NO. 1098**

(Agriculture Committee)

(At the request of the Office of Management and Budget)

ACHIEVEMENT DAYS EXPENDITURES

AN ACT to amend and reenact section 4-08-10.1 of the North Dakota Century Code, relating to boys' and girls' achievement days expenditures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-10.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-08-10.1. Achievement days - Premiums - Report of extension agent. ~~The~~ In July of each year the office of management and budget shall pay out of any moneys appropriated for boys' and girls' clubwork a sum not to exceed five hundred dollars to each extension agent of each organized county ~~or tribal government~~ within the state conducting boys' and girls' achievement days, ~~upon a voucher duly executed by the extension agent and filed with the office of management and budget, shall receive out of moneys appropriated for boys' and girls' clubwork an amount not to exceed five hundred dollars each year to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the extension agent shall file with refund to the office of management and budget a full and complete itemized statement showing the disposition of the premium payments, and any balance not expended, which~~ must be remitted to the state treasurer and placed to the credit of the general fund.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 55**SENATE BILL NO. 2398**

(Senators Klein, Wanzek)
(Representative Brandenburg)

STATE SEED COMMISSION MEMBERSHIP

AN ACT to amend and reenact subsection 2 of section 4-09-03 of the North Dakota Century Code, relating to the state seed commission membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-09-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner of agriculture, or the commissioner's designee, who shall serve as chairman. The dean of the college of agriculture of the North Dakota state university of agriculture and applied science is an advisory, nonvoting member of the commission.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 56

HOUSE BILL NO. 1423

(Representatives Lemieux, Berg, Monson)

CANOLA SEED STANDARDS

AN ACT to amend and reenact subsection 1 of section 4-09-10 of the North Dakota Century Code, relating to canola seed standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-09-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. a. In seeds of wheat, durum, barley, oats, rye, soybeans, dry beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only".
- b. In seeds of canola, seed must be certified by the commissioner as meeting the standards of this chapter or have been certified by another state or province having certification standards for canola which meet or exceed standards adopted by this chapter.
- ~~b.~~ c. In all other seeds not named in ~~subdivision~~ subdivisions a and b the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
- ~~e.~~ d. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, each component in excess of one percent of the whole must be named together with the percentage by weight of each. All components must be listed in the order of their predominance. Where more than one component is named, the word "mixture", or the word "mixed", must be shown conspicuously on the label.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 57**SENATE BILL NO. 2292**

(Senator Tallackson)

**POTATO COUNCIL DELINQUENT ASSESSMENTS
PENALTY**

AN ACT to amend and reenact section 4-10.1-16 of the North Dakota Century Code, relating to the penalty for delinquent payment of assessments to the potato council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.1-16 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-16. Penalty for nonpayment of assessment. Any designated handler who fails to pay any assessment levied by this chapter on the date that the same becomes due is delinquent and the council ~~shall~~ may levy a penalty on ~~such~~ the delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date, which penalty and interest must be collected in the manner as prescribed by section 4-10.1-14.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 58**HOUSE BILL NO. 1078**

(Agriculture Committee)

(At the request of the Soybean Council)

SOYBEAN ASSESSMENTS NONPAYMENT PENALTY

AN ACT to amend and reenact section 4-10.5-11 of the North Dakota Century Code, relating to the penalty for nonpayment of soybean assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.5-11 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-11. Penalty for nonpayment of assessment. Any designated handler who fails to pay any assessment levied by this chapter on the date that the assessment becomes due is delinquent and the council shall levy a penalty on ~~such~~ the delinquent payments of ~~ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date a~~ two percent late payment charge per month for assessments not remitted on time. The penalty and interest must be collected in the manner ~~as~~ prescribed by section 4-10.5-10.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 59

SENATE BILL NO. 2063

(Senator Andrist)

DRY PEA AND LENTIL DISTRICTS

AN ACT to amend and reenact section 4-10.7-04 of the North Dakota Century Code, relating to dry pea and lentil districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.7-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.7-04. Dry pea and lentil districts - Establishment. The following dry pea and lentil districts are established for the purpose of dividing the state into districts containing as nearly equal dry pea and lentil acreage as practicable:

1. District one consists of the counties of Burke, Divide, McKenzie, Mountrail, and Williams.
2. District two consists of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, ~~and~~ Slope, and Stark.
3. District three consists of the counties of Benson, Bottineau, McHenry, Pierce, Renville, Rolette, Towner, and Ward.
4. District four consists of the counties of Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Sheridan, and Wells.
5. District five consists of ~~all remaining North Dakota counties where dry peas and lentils are grown~~ the counties of Barnes, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Traill, and Walsh.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 60**HOUSE BILL NO. 1200**

(Representatives Rennerfeldt, Kempenich, Nichols)
(Senators Kinnoin, Lyson)

PURPLE CONEFLOWER REMOVAL PENALTY

AN ACT relating to the unauthorized removal or possession of purple coneflowers, *Echinacea purpurea* or *Echinacea angustifolia*; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purple coneflowers (*Echinacea purpurea* or *Echinacea angustifolia*) - Unauthorized removal - Penalty.

1. A person is guilty of a class A misdemeanor, is subject to court-ordered restitution to the landowner, and also is subject to a civil penalty of up to ten thousand dollars if that person willfully enters upon land owned by another and, without the express written consent of the owner, removes or attempts to remove a purple coneflower, *Echinacea purpurea* or *Echinacea angustifolia*, from the land.
2. A person is guilty of a class A misdemeanor, is subject to court-ordered restitution to the state, and is subject to a civil penalty of up to ten thousand dollars if that person willfully removes or attempts to remove a purple coneflower, *Echinacea purpurea* or *Echinacea angustifolia*, from state-owned land.
3. A person is guilty of a class A misdemeanor and also is subject to a civil penalty of up to ten thousand dollars if that person willfully possesses a purple coneflower removed from land in violation of this section.
4. Any vehicle used to transport a purple coneflower removed or possessed in violation of this section is forfeitable property under chapter 29-31.1.

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

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 61

HOUSE BILL NO. 1399

(Representatives Nicholas, Nichols, Dalrymple)
(Senators Kinnoin, Wanzek)

WHEAT LEVY

AN ACT to amend and reenact section 4-28-07 of the North Dakota Century Code, relating to the wheat tax levy and its use.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy.

1. a. A tax of ~~eight~~ ten mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
 - b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] ~~are~~ is not accurately determined at the time of the lien, pledge, or mortgage.
 - c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
 - b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
 - c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to the 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.
3. 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.

4. The commission may use the amount raised by two mills of the ten-mill levy provided for in this section to support the commission's involvement in trade issues throughout the world.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 62

HOUSE BILL NO. 1439

(Representatives Kempenich, Drovdal, Warner)
(Senators Solberg, Tomac)

PESTICIDE APPLICATOR FINANCIAL RESPONSIBILITY

AN ACT to amend and reenact section 4-35-09.1 of the North Dakota Century Code, relating to proof of financial responsibility for commercial pesticide applicators; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-35-09.1. (~~Effective January 1, 1998~~) Proof of financial responsibility -
Exceptions.**

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. Minimum financial responsibility must be demonstrated annually in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the commissioner of agriculture at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The commissioner of agriculture must immediately request the suspension of the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder must demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered. ~~A rancher is exempt from this section if the~~
2. This section does not apply to:

 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator

certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

- c. A person required to be certified in the right-of-way category.
- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

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

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 63

SENATE BILL NO. 2081

(Senators Tomac, Wanzek)

(Representatives Aarsvold, Nicholas)

(At the request of the Commissioner of Agriculture)

PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for the continuation of an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the state health officer, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall continue to implement the project authorized by section 1 of chapter 74 of the 1997 Session Laws, which is known as project safe send. The purpose of the project is to:
 - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
 - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
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. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the 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 described in section 1 of this Act must occur in areas to be determined by the commissioner of agriculture in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 12, 2000, the commissioner of agriculture shall determine whether the project implemented and continued under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-seventh legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 64

HOUSE BILL NO. 1252

(Representatives Brandenburg, Froseth, D. Johnson, Pollert)
(Senators Klein, Wanzek)

CROP PROTECTION PRODUCT SALES

AN ACT relating to sale and use of crop protection products; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Crop protection products - Canadian labels. The agriculture commissioner, with the advice and consent of the appropriate agricultural commodity group, may authorize the sale and use in this state of a crop protection product that has a Canadian label, if the commissioner determines that a crop protection product having an American label contains substantially similar active ingredients and that its importation and use does not violate federal law. The commissioner shall require an applicator to possess the American label and apply the product in accordance with the American label provisions.

SECTION 2. Special local needs exemption - Tolerances. The agriculture commissioner, in cooperation with the environmental protection agency, shall use tolerance data established or obtained in North America in pursuing special local needs exemptions for crop protection products under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

SECTION 3. Crop protection products - Registration process - Joint labeling. The governor and the agriculture commissioner shall work with all appropriate public and private entities to foster the development of a single, uniform process for the joint North American labeling of crop protection products not available for sale and use in this state as of the effective date of this Act.

SECTION 4. Crop protection products - Request to petition for registration. On the written request of any agricultural commodity group, the agriculture commissioner shall petition the environmental protection agency for the American registration of a crop protection product approved for use in Canada.

SECTION 5. Crop protection products - Joint labeling - Report to legislative council. During the 1999-2000 interim, the agriculture commissioner shall report at least twice to the legislative council regarding the efforts to develop a single, uniform process for the joint North American labeling of crop protection products.

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

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 65

HOUSE BILL NO. 1428

(Representatives Monson, R. Kelsch, Nichols)
(Senators Heitkamp, D. Mathern, Thane)

INDUSTRIAL HEMP PRODUCTION

AN ACT to authorize the production of industrial hemp; to amend and reenact subsection 13 of section 4-09-01 of the North Dakota Century Code, relating to the definition of noxious weed seeds; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Industrial hemp (cannabis sativa l.) - Oilseed. Industrial hemp (cannabis sativa l.), having no more than three-tenths of one percent tetrahydrocannabinol, is recognized as an oilseed. Upon meeting the requirements of section 2 of this Act, any person in this state may plant, grow, harvest, possess, process, sell, and buy industrial hemp (cannabis sativa l.) having no more than three-tenths of one percent tetrahydrocannabinol.

SECTION 2. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.

1. Any person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner of agriculture for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of industrial hemp. Except for employees of the agricultural experiment station or the North Dakota state university extension service involved in research and extension related activities, the commissioner shall require each applicant for initial licensure to file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and with the federal bureau of investigation for federal processing. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing industrial hemp for commercial purposes.
2. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by

the licensee, and the names of the persons to whom the hemp was sold or distributed.

3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for supervision of the industrial hemp during its growth and harvest. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the attorney general's operating fund and are hereby appropriated to the attorney general to be used to enforce sections 1 and 2 of this Act.

SECTION 3. AMENDMENT. Subsection 13 of section 4-09-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. "Noxious weed seeds" means the seeds of either of the following classifications:
 - a. "Prohibited noxious weed seeds" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practice including the seeds of leafy spurge (*euphorbia esula* ~~4: l.~~), field bindweed (*convolvulus arvensis* ~~4: l.~~), Canada thistle (*cirsium arvense* ~~4: (l.) scop.~~), perennial sow thistle (*sonchus arvensis* ~~4: l.~~), Russian knapweed (*centaurea* ~~peris pat~~ *repens* l.), absinth wormwood (*artemisia* ~~absinthim~~ *absinthium* l.), hemp (*cannabis sativa* l.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* l.), spotted knapweed (*centaurea* ~~maculosalam~~ *maculosa* lam.), ~~and~~ hoary cress (*cardaria draba* ~~4: (l.) desv.~~), and yellow starthistle (*centaurea solstitialis* l.).
 - b. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds of dodder (*cuscuta* species), hedge bindweed (*convolvulus sepium* l.), wild oats (*avena fatua* l.), and quackgrass (*agropyron repens* ~~4: (l.) beauv.~~).

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 66**SENATE BILL NO. 2356**
(Senator Bowman)**MULTISTATE AGRICULTURAL MARKETING
COMMISSION STUDY**

AN ACT to provide for a Legislative Council study of the feasibility and desirability of forming a multistate agricultural marketing commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. MULTISTATE AGRICULTURE MARKETING COMMISSION - LEGISLATIVE COUNCIL STUDY. During the 1999-2000 interim, the Legislative Council shall consider studying the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers. If conducted, the study must examine which entities set and control the prices of specific agricultural products, which federal trade policies assist or hinder the marketing of agricultural commodities, which federal and state laws assist or hinder the marketing of agricultural commodities, and which federal and state laws assist or hinder the use of agricultural contracts. If conducted, the study must also examine how this state can work with federal agencies and federal representatives to ensure the best possible climate for the marketing of agricultural products on behalf of North Dakota producers. The Legislative Council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Approved March 26, 1999
Filed March 26, 1999

ALCOHOLIC BEVERAGES

CHAPTER 67

SENATE BILL NO. 2240

(Senators Lee, B. Stenehjem, DeMers)
(Representatives Carlson, Poolman)

PUBLIC INTOXICATION

AN ACT to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-05.1. Public intoxication - Assistance - Medical care. A peace officer has authority to take any apparently intoxicated person to the person's home, to a local hospital, to a detoxification center, or, whenever that person constitutes a danger to that person or others, to a jail for purposes of detoxification. A duly licensed physician of a local hospital or a licensed addiction counselor of a detoxification center has authority to hold that person for treatment up to seventy-two hours. That intoxicated person ~~must~~ may not be held in jail because of intoxication more than twenty-four hours. An intoxicated person may not be placed in a jail unless a jailer is constantly present within hearing distance and medical services are provided when the need is indicated. Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall make a reasonable effort to notify the intoxicated person's family as soon as possible. Any additional costs incurred by the city or county on account of an intoxicated person shall be recoverable from that person.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 68

HOUSE BILL NO. 1295

(Representatives Rose, Cleary, Jensen, N. Johnson)

ALCOHOL CONSUMPTION AND CHEMICAL INHALATION PENALTIES

AN ACT to amend and reenact sections 5-01-08, 12.1-36-06, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to consumption of alcohol, inhalation of volatile chemicals, and to arrest without a warrant; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1997 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 manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction. Except as permitted in this section and section 5-02-06, any person under twenty-one years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming or having recently consumed 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 offense of consumption occurs in the county of consumption or the county where the offender is arrested.

SECTION 2. AMENDMENT. Section 12.1-31-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-06. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty. A person is guilty of a class B misdemeanor if that person intentionally inhales the vapors of a volatile chemical in a manner designed to affect the person's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the person's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in chapter 19-03.1. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.

3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
- ~~5.~~ 6. Carbon tetrachloride.
- ~~6.~~ 7. Chlorinated hydrocarbons.
- ~~7.~~ 8. Chlorofluorocarbons.
- ~~8.~~ 9. Chloroform.
- ~~9.~~ 10. Cyclohexane.
- ~~10.~~ 11. Diethyl ether.
- ~~11.~~ 12. Ethyl acetate.
13. Fluorocarbon.
- ~~12.~~ 14. Glycol ether inter solvent.
- ~~13.~~ 15. Glycol ether solvent.
- ~~14.~~ 16. Hexane.
- ~~15.~~ 17. Ketone solvent.
- ~~16.~~ 18. Methanol.
- ~~17.~~ 19. Methyl cellosolve acetate.
- ~~18.~~ 20. Methyl ethyl ketone.
- ~~19.~~ 21. Methyl isobutyl ketone.
- ~~20.~~ 22. Nitrous oxide.
23. Petroleum distillate.
- ~~21.~~ 24. Toluene.
- ~~22.~~ 25. Trichloroethane.
- ~~23.~~ 26. Trichloroethylene.
- ~~24.~~ 27. Xylol or xylene.

SECTION 3. AMENDMENT. Subsection 1 of section 29-06-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:

- a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
- b. When the person arrested has committed a felony, although not in the officer's presence.
- c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
- d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
- e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
- f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
- g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 14-07.1-13, or for an assault involving domestic violence under section 14-07.1-11.
- h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section 12.1-31-06.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 69

SENATE BILL NO. 2216

(Senators Thompson, T. Mathern)
(Representatives Delmore, Rose, Thorpe, Stefonowicz)

ALCOHOLIC BEVERAGE SHIPMENT

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to the shipment of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.

This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person as described under subsection 1 or 2. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 70**SENATE BILL NO. 2405**

(Senators Grindberg, St. Aubyn)

ALCOHOLIC BEVERAGE SALE

AN ACT to amend and reenact sections 5-02-01.1 and 5-02-06 of the North Dakota Century Code, relating to the sale of alcoholic beverages; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at 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 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 to regulate and restrict the operation of 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 permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:
 - a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
 - b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
 - c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and

- d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 2. AMENDMENT. Section 5-02-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty -

Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, if the person is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, or if the person is a law enforcement officer entering the premises in the performance of official duty. Any person under twenty-one years of age may remain in an area of a site where beer, wine, or sparkling wine is sold in accordance with the conditions of an event permit issued pursuant to section 5-02-01.1. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

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

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 71

HOUSE BILL NO. 1260 (Representative Keiser) (Senator Krebsbach)

BEER WHOLESALER AND BREWER RELATIONSHIPS

AN ACT to amend and reenact sections 5-04-01, 5-04-02, 5-04-04, subsection 1 of section 5-04-07, sections 5-04-08, and 5-04-13 of the North Dakota Century Code, relating to beer wholesaler and brewer relationships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-04-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-04-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agreement" means one or more of the following:
 - a. A commercial relationship between a licensed beer wholesaler and a licensed brewer of a definite or indefinite duration which is not required to be evidenced in writing.
 - b. A relationship whereby the beer wholesaler is granted the right to offer and sell a brand or brands of beer offered by a brewer.
 - c. A relationship whereby the beer wholesaler, as an independent business, constitutes a component of a brewer's distribution system.
 - d. A relationship whereby the beer wholesaler's business is substantially associated with a brewer's brand or brands, designating the brewer.
 - e. A relationship whereby the beer wholesaler's business is substantially reliant on a brewer for the continued supply of beer.
 - f. A written or oral arrangement for a definite or indefinite period whereby a brewer grants a license to a beer wholesaler to use a brand, trade name, trademark, or service mark, and in which there is a community of interest in the marketing of goods or services at wholesale or retail.
2. "Ancillary business" means a business owned by a wholesaler, a stockholder of a wholesaler, or a partner of a wholesaler, the primary business of which is directly related to the transporting, storing, or marketing of the brewer's products with whom the wholesaler has an agreement.
3. "Beer wholesaler" or "wholesaler" means any licensee, as outlined in section 5-03-01, importing or causing to be imported into this state or purchasing or causing to be purchased within this state, any beer for sale

or resale to retailers or wholesalers licensed pursuant to chapter 5-02 or 5-03, without regard to whether the business of the person is conducted under the terms of an agreement with a licensed brewer.

3. 4. "Brand" means any word, name, group of letters, symbol, or combination thereof, that is adopted and used by a brewer or importer to identify a specific beer product, and to distinguish that beer product from another beer product.
4. 5. "Brand extension" is any brand that incorporates all or a substantial part of the unique features of a preexisting brand of the same brewer or importer, and which relies to a significant extent on the goodwill associated with that preexisting brand.
5. 6. "Brewer" means every licensed brewer or importer of beer located within or without this state who enters into an agreement with any beer wholesaler licensed to do business in this state.
6. 7. "Person" means a natural person, corporation, limited liability company, partnership, trust, agency, or other entity as well as the individual officers, directors, or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, conservators, and guardians.
7. 8. "Territory" or "sales territory" means the area of primary sales responsibility designated by any agreement between any beer wholesaler and brewer for the brand or brands of any brewer.

SECTION 2. AMENDMENT. Section 5-04-02 of the North Dakota Century Code is amended and reenacted as follows:

5-04-02. Inducement or coercion prohibited. No brewer may:

1. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to accept delivery of any alcoholic beverage or any other commodity which has not been ordered by the beer wholesaler.
2. Induce or coerce, or attempt to induce or coerce, any beer wholesaler to ~~do any illegal act~~ enter any agreement or take any action that would violate any law or rule of this state by threatening to amend, cancel, terminate, or refuse to renew any agreement existing between a brewer and a beer wholesaler.
3. Require a wholesaler to assent to any condition, stipulation, or provision limiting the wholesaler's right to sell any other brewer's product anywhere in this state, provided the sale of another brewer's product does not materially impair the quality of service or quantity of sales of the existing brand or brands of the brewer seeking to impose the condition, stipulation, or provision.
4. Require a wholesaler to submit specific, confidential information regarding competitive brands, as a condition of renewal or continuation of an agreement.

5. Fail to provide each wholesaler of its brands with a written contract which conforms to this chapter and embodies the brewer's agreement with each wholesaler.

SECTION 3. AMENDMENT. Section 5-04-04 of the North Dakota Century Code is amended and reenacted as follows:

5-04-04. Agreement cancellation. Notwithstanding the terms, provisions, or conditions of any agreement, no brewer may amend, cancel, terminate, or refuse to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or causing a resignation. "Good cause" does not include the sale or purchase of a brewer. "Good cause" includes, but is not limited to, the following:

1. Revocation of the wholesaler's license to do business in this state.
2. The wholesaler's bankruptcy or insolvency.
3. Assignment for the benefit of creditors or similar disposition of the wholesaler's assets.
4. The wholesaler's failure to comply, without reasonable excuse or justification, with any reasonable and material requirement imposed upon ~~him~~ the wholesaler by the brewer.

In any dispute over an amendment, cancellation, termination, or nonrenewal, the brewer has the burden of proving the existence of good cause. If a wholesaler initiates a civil action, the brewer bears the burden of proving the existence of good cause after a prima facie showing by the wholesaler that good cause does not exist.

SECTION 4. AMENDMENT. Subsection 1 of section 5-04-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any brewer which amends, cancels, terminates, or refuses to renew any beer agreement, or causes a wholesaler to resign from an agreement, unless for "good cause" as defined by section 5-04-04, or which unreasonably withholds consent to any assignment, transfer, or sale of a wholesaler's business, shall pay the wholesaler reasonable compensation for the value of the wholesaler's business with relationship to the terminated brand or brands. The value of the wholesaler's business includes, but is not limited to, its goodwill, if any the fair market value of the wholesaler's business with respect to the terminated brand or brands, including the value of any ancillary business of the wholesaler and the goodwill of the business or ancillary business. The value of the wholesaler's business may not exceed the wholesaler's actual damages.

SECTION 5. AMENDMENT. Section 5-04-08 of the North Dakota Century Code is amended and reenacted as follows:

5-04-08. Judicial remedies. If a brewer engages in conduct prohibited under this chapter, a wholesaler, with whom the brewer has an agreement pursuant to this chapter, may maintain a suit against the brewer. The venue of any legal action taken under this section, or pursuant to a dispute arising out of an agreement or breach thereof, or over the provisions of an agreement, is a court, state or federal, located in North Dakota, or where the wholesaler maintains its principal place of

business in this state. The court may grant equitable relief as is necessary to remedy the effects of conduct which it finds to exist and which is prohibited under this chapter, including, but not limited to, declaratory judgment and injunctive relief. The court may award actual damages and costs. If the court finds the brewer has acted in bad faith in invoking amendment, termination, cancellation, or nonrenewal under this chapter or has unreasonably withheld its consent to any assignment, transfer, or sale of the wholesaler's agreement, the court may also award reasonable attorney's fees.

SECTION 6. AMENDMENT. Section 5-04-13 of the North Dakota Century Code is amended and reenacted as follows:

5-04-13. Waiver prohibited. No brewer may require any wholesaler to waive compliance with any provision of this chapter. Nothing in this chapter may be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties. However, no provision of any written agreement may require the law of any state other than North Dakota to govern the relationship of the parties.

Approved March 26, 1999
Filed March 26, 1999

BANKS AND BANKING

CHAPTER 72

HOUSE BILL NO. 1100

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

UNDERCAPITALIZED STATE BANK CORRECTIVE ACTION

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the authority of the state banking board to take corrective action concerning undercapitalized state banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is created and enacted as follows:

Prompt correction action. The board may enter an order if the board finds that a state bank is undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purpose of this section, undercapitalized, significantly undercapitalized, and critically undercapitalized have the same definition as found in title 12, Code of Federal Regulations, part 325, section 103. The order may require an undercapitalized state bank to take prompt corrective action as the board determines reasonable to bring the bank to an adequately capitalized condition, including the submission and implementation of an acceptable capital restoration plan. For a significantly or critically undercapitalized state bank, the board may issue a temporary cease and desist order appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a conservator or take such other action as may be better to resolve the problems of the state bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831(o) et seq.]. A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 73**SENATE BILL NO. 2135**

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

BANKING ASSOCIATION INVESTMENTS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to banking association investments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation.

~~No~~ A state banking association may not invest more than ~~one hundred sixty-five~~ percent of the amount of its unimpaired capital stock ~~and~~, surplus, and undivided profits in a banking facility, furniture, fixtures, and equipment without the approval of the commissioner or the state banking board.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 74**HOUSE BILL NO. 1270**

(Representatives Berg, Brekke)

TRUST COMPANY POWERS

AN ACT to create and enact a new subsection to section 6-05-08 of the North Dakota Century Code, relating to the corporate powers of a state-chartered trust company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-05-08 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law and subject to approval by the state banking board, engage in any fiduciary activity in which a federally chartered financial institution that is granted fiduciary powers may engage.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 75**HOUSE BILL NO. 1103**

(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

TRUST COMPANY OFFICER AND EMPLOYEE BONDS

AN ACT to create and enact a new section to chapter 6-05 of the North Dakota Century Code, relating to trust company officer and employee fidelity bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

Bonds of officers and employees. An officer or employee of any trust company, before entering upon the person's duties, shall furnish a bond to the trust company in the sum and upon the conditions as required by the board of directors in keeping with rules adopted by the state banking board. All bonds must be approved by the board of directors of the trust company and are subject to the approval of the commissioner. A record of the approval of the bonds by the board of directors of the trust company must be made on the records of the trust company and the bonds must be filed with the commissioner. Stockholders of the trust company are not eligible as bondsmen for the officers or employees.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 76

HOUSE BILL NO. 1099

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

UNDERCAPITALIZED CREDIT UNION CORRECTIVE ACTION

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to corrective actions concerning undercapitalized credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

Prompt corrective action. Whenever the state credit union board determines that any credit union under its supervision does not have adequate capital, the state credit union board, without a hearing, may declare that the credit union is either undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purposes of this section, a credit union is undercapitalized if it either has a net worth ratio of less than six percent or fails to meet any applicable risk-based net worth requirement established by the board by rule. A credit union is significantly undercapitalized if it has a net worth ratio of less than four percent or has a net worth ratio of less than five percent and fails to submit an acceptable net worth restoration plan or materially fails to implement a plan accepted by the board. A credit union is critically undercapitalized if it has a net worth ratio of less than two percent or such higher net ratio, not exceeding three percent, as the board may specify. The board, by order, may require a credit union that is undercapitalized to annually set aside as net worth an amount equal to up to four-tenths percent of its total assets. Additionally, the board may require an undercapitalized credit union to submit an acceptable net worth restoration plan to the board within the time allowed by the board. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the board may take possession of the credit union, appoint a conservator or liquidating agent for the credit union, or take such other action as the board determines would be appropriate to resolve the problems of the credit union.

A credit union that is the subject of such a board declaration may ask for a hearing before the board within five days after service upon it of the board's declaration. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of Burleigh County, within ten days after the order is served upon it. The appeal is governed by chapter 28-32.

Approved March 19, 1999

Filed March 22, 1999

CHAPTER 77**HOUSE BILL NO. 1374**

(Representatives Nottestad, Thorpe)
(Senators Krebsbach, Lindaas)

CREDIT UNION LOAN LIMITS

AN ACT to amend and reenact section 6-06-14 of the North Dakota Century Code, relating to credit union unsecured loan limits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee has general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to the North Dakota central credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed ~~twenty five~~ fifty thousand dollars. Security under this section includes an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the credit committee, or in excess of such limit if such excess is fully secured by unpledged shares. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer within seven days of the date of the filing of the application therefor. All loans not approved by a loan officer must be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 78

HOUSE BILL NO. 1161

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

TRUST COMPANY DISSOLUTION AND LIQUIDATION

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the voluntary and involuntary dissolution and liquidation of state trust companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Action to close state trust company. The commissioner or board may close and liquidate a state trust company on finding that the interests of its clients and creditors are jeopardized by the state trust company's insolvency or imminent insolvency or that the best interests of clients and creditors would be served by requiring that the state trust company be closed and its assets liquidated. A majority of the state trust company's directors, managers, or managing participants may voluntarily close the state trust company and place it with the commissioner for liquidation.

Involuntary closing. After closing a state trust company, the commissioner shall place a sign at its main entrance stating that the state trust company has been closed. A correspondent bank of the closed state trust company may not pay an item drawn on the account of the closed state trust company which is presented for payment after the correspondent has received actual notice of closing unless it previously certified the item for payment. As soon as practicable after posting the sign at the state trust company's main entrance, the commissioner shall file a copy of the notice of the action to close a state trust company in district court in the county where the state trust company's home office is located. The court in which the notice is filed shall docket it as a case styled, "In re liquidation of ____", inserting the name of the state trust company. As soon as this notice is filed, the court has constructive custody of all the state trust company's assets, and any action initiated which seeks to directly or indirectly affect state trust company assets is considered to be an intervention in the receivership proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a state trust company is Burleigh County, North Dakota, except on a motion filed and served concurrently with or before the filing of the answer, the court, on a finding of good cause, may transfer the action to the county of the state trust company's home office.

Nature and duration of receivership. The court may not require a bond from the commissioner as receiver. Any reference in this chapter to the receiver is a reference to the commissioner as receiver and any successors in office or an independent receiver appointed at the request of the commissioner. The acts of the receiver are the acts of the state trust company in liquidation and this state and its political subdivisions are not liable and may not be held accountable for any debt or obligation of a state trust company in receivership. The receiver has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of the state trust company as necessary to support an action taken on

behalf of the state trust company. A state trust company receivership must be administered continuously for the length of time necessary to complete its purposes, and the period prescribed by other law limiting the time for the administration of receiverships or of corporate affairs generally does not apply.

Contest of liquidation. A state trust company, acting through a majority of its directors, managers, or managing participants, may intervene in the action filed by the commissioner to challenge the commissioner's closing of the state trust company and to enjoin the commissioner or other receiver from liquidating its assets. The intervenors must file the intervention not later than the second business day after the closing of the state trust company, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating state trust company assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction. The court shall hear this action as quickly as possible and shall give it priority over other business. The state trust company or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all state trust company assets pending a final appellate court order even if the commissioner does not prevail in the district court. If the commissioner prevails in the district court, liquidation of the state trust company may proceed unless the district court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the district court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

Notice of state trust company closing. As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice, in a newspaper of general circulation in each community where the state trust company's home office and a branch are located. The notice must state that the state trust company has been closed for liquidation, that creditors and clients must present their claims for payment on or before a specific date, and that all safe deposit boxholders and bailors of property left with the state trust company should remove their property not later than a specified date. The receiver shall select the dates to allow the affairs of the state trust company to be wound up as quickly as feasible while allowing creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property, but may not select a date before one hundred twenty days after the date of the notice. The receiver may adjust the dates with the approval of the court with or without republication if additional time appears needed for these activities. As soon as reasonably practicable given the state trust company records and the adequacy of staffing, the receiver shall mail to each of the state trust company's known clients, creditors, safe deposit boxholders, and bailors of property left for the state trust company, at the mailing address shown on the state trust company records, an individual notice containing the information required in this section. The receiver may determine the form and content notices under this section.

Inventory. As soon as reasonably practicable given the condition of the state trust company records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the state trust company's assets for filing with the court. The inventory must be open to inspection.

Title and receiver. The receiver has title to all the state trust company's property, contracts, and rights of action, wherever located, beginning on the date the state trust company is closed for liquidation. The rights of the receiver have priority over all liens that arise after the date of the closing of the state trust company for liquidation.

Rights fixed. The rights and liabilities of state trust company liquidation and of a client, creditor, officer, director, manager, managing participant, employee, shareholder, participant, agent, or other person interested in the state trust company's estate are fixed on the date of closing of the state trust company for liquidation, except as otherwise directed by the court or as expressly provided by this chapter.

Depositories. The receiver may deposit funds collected on behalf of the state trust company estate in the Bank of North Dakota or one or more depository institutions in this state. If receivership funds deposited in an account at a depository institution exceed the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through pledge of securities or otherwise, without approval of the court.

Pending lawsuits. A judgment or order of a court of this state or of any other jurisdiction in an action pending by or against the state trust company, rendered after the date the state trust company was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit. Before the first anniversary of the date the state trust company was closed for liquidation, the receiver may not be required to plead to any suit pending against the state trust company in a court in this state on the date the state trust company was closed for liquidation and in which the receiver is a proper plaintiff or defendant.

New lawsuits. Except as otherwise provided in this section, the court in which the receivership proceeding is pending under this chapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the state trust company or receiver after the receivership proceeding starts. The receiver may file in any jurisdiction an ancillary suit that may be helpful to obtain jurisdiction or venue over a person or property. Exclusive venue of an action or proceeding instituted against the receiver or the receiver's designated agent, including an employee of the department, which asserts personal liability on the part of the receiver or designated agent lies in Burleigh County, North Dakota.

Records with third parties. Each state trust company affiliate, officer, director, manager, managing participant, employee, shareholder, participant, trustee, agent, employee, attorney, attorney-in-fact, or correspondent shall immediately upon request deliver to the receiver any property, book, record, account, document, or other writing of the state trust company which relates to the business of the state trust company, without cost to the receiver.

Injunction in aid of liquidation. On application by the receiver, the court may with or without notice issue an injunction restraining each state trust company, officer, director, manager, managing participant, employee, shareholder, participant, trustee, agent, employee, attorney, attorney-in-fact, accountant or accounting firm, correspondent, or another person from transacting the state trust company's business or wasting or disposing of its property or requiring the delivery of its property or assets to the receiver subject to the further order of the court. The court, at any time during a proceeding under this chapter, may issue another injunction or order considered necessary or desirable to prevent interference with the receiver of the proceeding, waste of the assets of the state trust company, the beginning of prosecution of an action, the obtaining of a preference, judgment, attachment, garnishment, or other lien, or the making of a levy against the state trust company or its assets.

Subpoena. In addition to the authority granted by law to the receiver relating to the taking of a deposition of a witness in a civil action, the receiver may request

the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a book, account, record, paper, or correspondence, or other record relating to the receivership estate. For this purpose, the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The court has statewide subpoena power and may compel attendance and production of a record before the receiver at the state trust company, the office of the receiver, or another location. In case of disobedience of a subpoena, or of the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce any record relating to the matter in question.

Preferences. Any transfer of or lien on the property or assets of a state trust company is voidable by the receiver if the transfer or lien is made or created after four months before the date the state trust company is closed for liquidation or one year before the date the state trust company is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, manager, principal shareholder, or participant of the state trust company or an affiliate of the state trust company, or was made or created with the intent of giving to a creditor, enabling the creditor to obtain a greater percentage of the claimant's debt that is given or obtained by another claimant of the same class.

Administrative expenses. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing these persons is an administrative expense of liquidation.

Disposal of property and settling claims. In the course of liquidating a state trust company, the receiver on order of the court entered with or without hearing may sell all or part of the real and personal property of the state trust company; borrow money and pledge all or part of the assets of the state trust company to secure the debt created, except that the receiver may not be held personally liable to repay borrowed funds; compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the state trust company; and enter another agreement on behalf of the state trust company that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

Filing reports and expenses. The receiver shall file quarterly reports with the court showing the operation, receipts, expenditures, and general condition of the state trust company in liquidation. The receiver shall also file a final report regarding the liquidated state trust company showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the state trust company. The receiver shall pay all administrative expenses out of funds or assets of the state trust company. Each quarter the receiver shall submit an itemized report of those expenses.

Fiduciary activities. As soon after beginning the receivership proceeding as is practicable, the receiver shall terminate all fiduciary positions it holds, surrender all property held by it as a fiduciary, and settle the state trust company's fiduciary accounts. The receiver shall release all segregated and identifiable fiduciary property held by the state trust company to successor fiduciaries. With the approval of the court, the receiver may sell the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in

the best interests of the state trust company's estate and the persons interested in the fiduciary accounts. If commingled fiduciary funds held by the state trust company as trustee are insufficient to satisfy all fiduciary claims to the commingled funds, the receiver shall distribute commingled funds pro rata to all fiduciary claimants of commingled funds based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply. The receiver may require certain fiduciary claimants to file proofs of claim if the records of the state trust company are insufficient to identify their respective interests.

Disposition and maintenance of records. On approval by the court, the receiver may dispose of records of the state trust company in liquidation which are obsolete and unnecessary to continue administration of the receivership proceeding. Records of a liquidated state trust company are not public records for any purpose and are exempt from public disclosure. To maintain the records of a liquidated state trust company after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account, and use them for maintenance, storage, and disposal of records in closed receivership estates.

Filing claims. A person who has a claim against the estate of a state trust company in liquidation must file proof of claim pursuant to rules adopted by the state banking board. The priority of disposition of assets from the estate of a state trust company must be in accordance with the order of each class as provided by this section. Every claim in each class must be paid in full, or adequate funds must be retained for that payment, before the members of the next class receive any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument in the articles of association. Assets must be distributed in the following order of priority: administrative expenses; approved claims of secured trust deposits; approved claims of secured creditors; approved claims by beneficiaries insufficient to satisfy all fiduciary claims to commingled fiduciary funds or missing fiduciary property and approved claims of clients of the state trust company; other approved claims of general creditors not falling within a higher priority under this section; approved claims of a type described above that were not filed within the period prescribed; and claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders, participants, or other owners accorded the terms established by issue, class, or series. After completion of the liquidation, any unclaimed property remaining in the hands of the receiver must be considered abandoned property.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 79**SENATE BILL NO. 2326**

(Senators Krebsbach, Klein, D. Mathern, Wardner)
(Representatives Keiser, Mahoney, Poolman)

ELECTRONIC TRANSFER WITHOUT SUFFICIENT FUNDS

AN ACT to amend and reenact sections 6-08-16, 6-08-16.1, and subsection 1 of section 6-08-16.2 of the North Dakota Century Code, relating to authorizing an electronic funds transfer without sufficient funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic fund transfer, or order in full upon its authorized presentation. Violation of this subsection is an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars.
2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer

⁵⁵ Section 6-08-16 was also amended by section 2 of House Bill No. 1044, chapter 51, and section 1 of House Bill No. 1243, chapter 80.

authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.

3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, electronic funds transfer authorization, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
4. A notice of dishonor may be mailed by the holder, or its agent or representative, of the check 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 Check

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that a check 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. Within ten
 days from the receipt of this notice, you must pay or tender to

 (Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or
 or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or ~~money~~ order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

SECTION 2. AMENDMENT. Section 6-08-16.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.1. Issuing check or draft without account - Penalty. Any person who issues any check, draft, or order, or authorizes an electronic funds transfer, upon any bank or depository, for the payment of money, and, at the time of the issuance does not have an account with the bank or depository upon which the check, draft, electronic funds transfer authorization, or order was written, is guilty of a class A misdemeanor.

⁵⁶ **SECTION 3. AMENDMENT.** Subsection 1 of section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, electronic funds transfer authorization, or order for the payment of money.
 - d. "Issues" means draws, utters, electronically authorizes, or delivers.

Approved March 19, 1999
Filed March 19, 1999

⁵⁶ Section 6-08-16.2 was also amended by section 3 of House Bill No. 1044, chapter 51, and section 2 of House Bill No. 1243, chapter 80.

CHAPTER 80

HOUSE BILL NO. 1243

(Representatives L. Thoreson, Mahoney)
(Senators Krebsbach, Traynor)

NONSUFFICIENT FUNDS AND NO ACCOUNT CHECKS PENALTY

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without sufficient funds, credit, or an account; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁷ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is ~~an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars:~~
 - a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
 - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
 - c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five

⁵⁷ Section 6-08-16 was also amended by section 2 of House Bill No. 1044, chapter 51, and section 1 of Senate Bill No. 2326, chapter 79.

hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or

- d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient fund check, draft, or order.
2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient fund checks, drafts, or orders. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
4. A notice of dishonor may be mailed by the holder, or ~~its~~ the holder's agent or representative, of the check 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 Check

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that a check dated _____,
 49 _____, 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. Within ten days from the receipt of this
 notice, you must pay or tender to _____
 (Holder or Agent or Representative)
 sufficient moneys to pay such instrument in full and any collection
 fees or costs not in excess of twenty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

⁵⁸ **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1997 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~~ 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 ten 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.~~

⁵⁸ Section 6-08-16.2 was also amended by section 3 of House Bill No. 1044, chapter 51, and section 3 of Senate Bill No. 2326, chapter 79.

The person also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, 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 five hundred dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars, and:
 - a. ~~At~~ 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 also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class G felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:
 - a. ~~At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or~~
 - b. ~~At the time of issuing the instruments, or at the time of presentation for payment if made within ten 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.~~

4. The A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative.

5. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, 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.

6. 5. 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 if the holder, or the holder's agent or representative, mailed a notice under subsection 6. ~~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. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2, subdivision b of subsection 3, or subdivision b of subsection 4. A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed account instrument.

7. 6. A notice of dishonor may be mailed by the holder, or ~~its~~ the holder's agent or representative, 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 notified that an instrument dated _____,
 49 _____, 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 twenty 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.

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

Approved April 7, 1999
 Filed April 8, 1999

CHAPTER 81

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

ELECTRONIC FUND TRANSFER FEES AND DISCLOSURES

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to electronic fund transfer fees and disclosures; and to amend and reenact subsection 7 of section 6-03-02 of the North Dakota Century Code, relating to bank electronic fund transfer fees and disclosures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-03-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. To exercise, as determined by the board by order or rule, all the incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility, must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts. ~~A financial institution engaging in electronic funds transfers in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution.~~

SECTION 2. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Electronic funds transfer fees. The operator of any electronic funds transfer facility providing for electronic funds transfer in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at the time and in a manner that allows the user to terminate or cancel the transaction without incurring the transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution. The name of the owner of an automated teller machine must be shown on each automated teller machine located separate from a financial institution.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 82**SENATE BILL NO. 2137**

(Government and Veterans Affairs Committee)
(At the request of the Bank of North Dakota)

**BANK OF NORTH DAKOTA LOAN PARTICIPATION
REPEAL**

AN ACT to repeal section 6-09-15.4 of the North Dakota Century Code, relating to participation by the Bank of North Dakota in loans to nonfarming small business concerns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 6-09-15.4 of the North Dakota Century Code is repealed.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 83**SENATE BILL NO. 2136**

(Government and Veterans Affairs Committee)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA LAND SALES

AN ACT to amend and reenact section 6-09-37 of the North Dakota Century Code, relating to sale of land acquired by the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-37 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-37. Sale and leasing of acquired agricultural real estate. The sale and leasing of ~~all~~ agricultural real estate with an appraised value of ten thousand dollars or more acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure must be done in accordance with chapter 15-07 or 15-09 and rules of the board of university and school lands. The sale and leasing of agricultural real estate with an appraised value of less than ten thousand dollars, acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 84**SENATE BILL NO. 2414**

(Senators Krauter, Grindberg, Kelsh, O'Connell)
(Representatives Drovdal, R. Kelsch)

HIGHER EDUCATION SAVINGS PLAN

AN ACT to create a North Dakota higher education savings plan; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota higher education savings plan - Administration - Rules. The Bank of North Dakota shall adopt rules to administer, manage, promote, and market a North Dakota higher education savings plan. The Bank shall ensure that the North Dakota higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$57,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of administering, managing, promoting, and marketing the North Dakota higher education savings plan, for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 85**SENATE BILL NO. 2106**

(Natural Resources Committee)

(At the request of the State Water Commission)

**DRINKING WATER REVOLVING FUND
PARTICIPATION**

AN ACT to create and enact a new subdivision to subsection 6 of section 6-09.4-03 of the North Dakota Century Code, relating to the state water commission's participation in the municipal bond bank's drinking water state revolving fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 6 of section 6-09.4-03 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The state water commission, for purposes of the revolving loan fund program established by chapter 61-28.1.

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 86**SENATE BILL NO. 2042**
(Legislative Council)
(Education Finance Committee)**SCHOOL DISTRICT AID PAYMENT WITHHOLDING**

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to evidences of indebtedness and the withholding of state aid to school districts; and to amend and reenact sections 6-09.4-18 and 21-03-44 of the North Dakota Century Code, relating to insurance or guaranties for bonds and sinking funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Evidences of indebtedness - Authority to withhold school district state aid.

1. If the municipal bond bank or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the bond bank or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15-40.1 until the payment of the principal or interest has been made to the bond bank or the paying agent, or until the bond bank or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the bond bank or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15-40.1 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the municipal bond bank or the paying agent. The bond bank or the paying agent shall apply the funds to payments that the school district is required to make to the bond bank or the paying agent.
3. If funds are withheld from a school district and made available to the bond bank or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the bond bank or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction

and made available to the bond bank or a paying agent under this section.

4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the municipal bond bank and the state board of public school education for the benefit of the bond bank and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the bond bank and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the bond bank and the state board of public school education, those funds must be transferred to the bond bank upon certification by the bond bank that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the bond bank bonds issued to purchase the municipal securities for which the escrow fund was established.

SECTION 2. AMENDMENT. Section 6-09.4-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.4-18. Insurance or guaranty. The bond bank is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance ~~or~~, guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds issued by the bond bank, or on any municipal securities purchased or held by the bond bank, pursuant to this chapter; and to enter into any agreement or contract with respect to any such insurance ~~or~~, guaranty, ~~or~~ letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the bond bank to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 3. AMENDMENT. Section 21-03-44 of the North Dakota Century Code is amended and reenacted as follows:

21-03-44. Sinking fund - Use for unauthorized purpose. Money may not be withdrawn from a sinking fund and appropriated to any purpose other than the purpose for which the fund was instituted until that purpose has been accomplished, except as authorized by section 1 of this Act and sections 21-03-42 through 21-03-45.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 87**SENATE BILL NO. 2289**

(Senators Wanzek, Tomac)
(Representatives D. Johnson, Renner)

AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to an expiration date for the agricultural mediation service; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1997 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 chair, as is necessary to fulfill its duties under this chapter. The ~~department of~~ agriculture commissioner 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 the fees~~ are used to continue the service until June 30, ~~1999~~ 2001. 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.

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

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 88

HOUSE BILL NO. 1163

(Agriculture Committee)

(At the request of the Bank of North Dakota)

FAMILY FARM LOAN RESTRICTIONS

AN ACT to amend and reenact sections 6-09.11-03, 6-09.11-05, and 6-09.11-06 of the North Dakota Century Code, relating to family farm loan amount restrictions, residency requirements, and net worth restrictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.11-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.11-03. Loans - Participation by the Bank of North Dakota.

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 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.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of ~~seventy-five~~ one hundred fifty thousand dollars or ninety percent of the loan amount.

SECTION 2. AMENDMENT. Section 6-09.11-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.11-05. Loan applications. An applicant for a loan must meet all of the following qualifications:

1. The applicant is at least eighteen years of age.
2. ~~The applicant has resided in North Dakota continuously during the three years immediately preceding the date of the application.~~
- ~~3.~~ 3. The applicant is a farmer.
4. ~~3.~~ 4. The applicant has had the farming experience and training necessary to enable the applicant to operate a family farm and to make proper use of the proceeds of the loan.
5. ~~4.~~ 4. The net worth of the applicant does not exceed ~~one~~ two hundred ~~fifty~~ thousand dollars.

SECTION 3. AMENDMENT. Section 6-09.11-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.11-06. Loan restrictions.

1. A loan under this chapter may not ~~exceed~~ be greater than the lesser of one hundred fifty thousand dollars or ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the Bank of North Dakota. The Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to purchase a participation interest in a loan under this chapter.
2. Except as otherwise provided:
 - a. A loan under this chapter must be repayable in installments and may have a term up to twenty years.
 - b. All or part of a loan under this chapter may be repaid at any time, subject to conditions set forth in the mortgage.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 89

SENATE BILL NO. 2242

(Senators Holmberg, Grindberg, St. Aubyn)
(Representatives Mickelson, Poolman)

BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM

AN ACT to provide for a beginning entrepreneur loan guarantee program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Beginning entrepreneur" means a resident of this state who:
 - a. Has graduated from high school or has received a general equivalency certificate.
 - b. Has had some training, by education or experience, in the type of revenue-producing enterprise which that person wishes to begin.
 - c. Has, including the net worth of that person's dependents and spouse, if any, 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.
2. "Lender" means any lending institution that is regulated or funded under the laws of this state or the United States and which has provided financing to a beginning entrepreneur for the establishment of a qualified revenue-producing enterprise.
3. "Loan guarantee" means an agreement that in the event of default by a beginning entrepreneur under a note and mortgage or other loan or financing agreement, the Bank of North Dakota shall pay the lender the amount agreed upon up to eighty-five percent of the amount of principal due the lender on a loan at the time the claim is approved from the loan guarantee fund.
4. "Qualified revenue-producing enterprise" means any real property, buildings, improvements on the property or to the buildings, any equipment located on the property or in the buildings, and any personal property used or useful in connection with a revenue-producing enterprise engaged in any industry or business not prohibited by the Constitution of North Dakota or the laws of this state. The term does not include an enterprise for which a person is eligible under section 6-09-15.5 or chapter 6-09.8.

SECTION 2. Loan guarantee fund - Administration. A beginning entrepreneur loan guarantee fund is created to be used by the Bank of North Dakota to administer a beginning entrepreneur loan guarantee program to be used in conjunction with other loan programs. The fund includes moneys appropriated by the legislative assembly for administration of the program and all earnings, less any administrative charges, from the investment of those moneys. The Bank may retain any administrative charges necessary for the administration of the program established by this chapter. The fund is not subject to section 54-44.1-11.

SECTION 3. Application for guarantee - Term - Annual fee. A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to seventy-five thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than five hundred thousand dollars in loans under the beginning entrepreneur loan guarantee program.

SECTION 4. Termination. The Bank of North Dakota may terminate a loan guarantee upon the sale, exchange, assignment, or transfer of the beginning entrepreneur's interest in the qualified revenue-producing enterprise. The Bank shall terminate a loan guarantee if the Bank determines that the loan guarantee was obtained by fraud or material misrepresentation of which the lender or seller has actual knowledge.

SECTION 5. Rules. Notwithstanding any provision of this chapter, the Bank of North Dakota shall adopt rules to implement this chapter. The rules may include a formula for determining the ratio of reserves in the loan guarantee fund to the amount of guaranteed loans, the maximum dollar amount of a guarantee, and the maximum allowable annual interest rate on a loan eligible for a guarantee.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 90

HOUSE BILL NO. 1383

(Representatives Dorso, Clark)
(Senators Grindberg, G. Nelson)

HOUSING DEVELOPMENT FUND

AN ACT to provide for establishment and operation of the housing development fund and to provide a financial institutions tax credit for participation in the fund; to amend and reenact sections 57-35.3-09 and 57-35.3-10 of the North Dakota Century Code, relating to allocation of financial institutions' tax revenues; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Financial institution" means a financial institution as defined in section 57-35.3-01.
2. "Fund" means the housing development fund.
3. "Fund administrator" means a certified development corporation with a statewide focus which the small business administration has designated as a certified development corporation.
4. "Governing board" means the board of directors of the corporation or board of governors of the limited liability company established under section 2 of this Act.

SECTION 2. Establishment - Organization. Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this Act, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is responsible for adopting policies and procedures governing activities in connection with the fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 3. Housing development fund use. The housing development fund established under section 2 of this Act may be used only for making participation loans in housing development projects in this state. The participation of the fund in a loan may not exceed the aggregate of loans from other sources and the investment of the project developer. A loan from the fund may not be made to a financial institution. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Loans may be made from the fund for any housing project in the state, but the primary focus for loans from the fund must be to provide funding for multifamily housing projects in rural areas that are experiencing or expecting a shortage of housing as a result of economic

development. For purposes of this section, "rural areas" means the area of the state not within the corporate limits of a city with a population of eight thousand or more.

SECTION 4. Loan administration. An application for a loan from the fund must contain the information prescribed by the governing board. Except as provided in this section, information contained in applications for loans from the fund is confidential. The fund administrator shall review each loan application; report to the governing board whether the applicant represents a housing project, whether the housing project is for multifamily housing, and whether the housing project is located in a rural area; and make a recommendation to the governing board on whether to approve the loan application.

SECTION 5. Audited financial statement - Report of fund operations. The governing board shall contract annually with a certified public accountant for performance of an audit and preparation of audited financial statements of the fund, prepared in accordance with generally accepted accounting principles, and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The governing board shall provide the financial statements and report to the governor and the legislative council. The governing board shall make copies available to the public upon request. The cost of the audit and preparation of financial statements and report must be paid from the fund.

SECTION 6. Financial institutions tax credit - Penalty. If the requirements of this Act are met, a financial institution is entitled to a credit against taxes due under section 57-35.3-03 as determined under this section.

1. A financial institution making or participating in a loan under this Act is entitled to a credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating financial institution's share of the interest earned on the loan during the calendar year; and
 - b. The participating financial institution's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.
2. The maximum credit allowed a financial institution for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the financial institution's tax liability under chapter 57-35.3 and unused credit may not be carried forward.
4. Credits under this section for all financial institutions may not exceed an aggregate amount of seven hundred and fifty thousand dollars in a calendar year.

5. A financial institution claiming a credit under this section shall attach to its return a schedule identifying each county within this state within which are located housing development projects funded by loans for which credits are claimed by that financial institution. The schedule must identify the location of, and the dollar amount of credit attributable to, each project within each county.

SECTION 7. Loans limited by assets of financial institutions. The aggregate amount of all loans made by a financial institution under this Act or the aggregate amount of a financial institution's participation in loans made under this Act may not at any time exceed five percent of the financial institution's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

SECTION 8. AMENDMENT. Section 57-35.3-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-09. Financial institution tax distribution fund - Continuing appropriation. The balance in the financial institution tax distribution fund on February first of 1999 and each subsequent year must be distributed in the following manner:

1. On or before February 1, 1999, the commissioner shall determine and certify to all county auditors:
 - a. The total amount of tax certified to each county under chapters 57-35 and 57-35.1 in the years 1993 through 1997; and
 - b. The amount determined under subdivision a for each county as a percentage of the amount determined under subdivision a for all counties.
2. On or before February fifteenth of 1999 and each subsequent year, the commissioner shall determine and certify to the state treasurer an amount for payment by the state treasurer to each county treasurer equal to:
 - a. The percentage for that county determined under subdivision b of subsection 1 $\frac{1}{2}$, multiplied by
 - ~~b. The the~~ the balance in the financial institution tax distribution fund on February first of that year plus five-sevenths of the total amount of credits claimed and allowed in the state under section 6 of this Act for the taxable year for which the distribution is being made; minus
 - b. Five-sevenths of the total amount of credits claimed and allowed in that county under section 6 of this Act for the taxable year for which the distribution is being made. If the amount subtracted under this subdivision exceeds the county's share of fund distributions for the taxable year, any excess amount may be carried forward and deducted from distributions to the county for up to two taxable years.
3. On or before March first of 1999 and each subsequent year, the state treasurer shall pay to the treasurer of each county the amount determined for that county under subsection 2. The amounts necessary

to make these payments are appropriated to the state treasurer as a standing and continuing appropriation for distribution under this subdivision.

4. On or before February 1, 1999, the treasurer of each county shall determine and certify to the state treasurer and to all affected political subdivisions of the county:
 - a. The total amount of tax apportioned and distributed to the state, the county, and each political subdivision of the county under sections 57-35-13 and 57-35.1-06 in the years 1994 through 1998; and
 - b. The amount determined under subdivision a for each distributee as a percentage of the amount determined under subdivision a for all distributees.
5. On or before the tenth working day of March in 1999 and each subsequent year, the treasurer of each county shall determine and distribute to each distributee described in subsection 4 an amount equal to:
 - a. The percentage for that distributee determined under subdivision b of subsection 4; multiplied by
 - b. The amount of the payment by the state to the county in that year under subsection 3.

SECTION 9. AMENDMENT. Section 57-35.3-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-10. Certification of estimated tax. On or before August 1, 1998, and each subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be made to each county in the following year. The preliminary estimate must show the total amount of credits claimed and allowed in each county under section 6 of this Act for the taxable year and how those credits affect distributions. The preliminary estimate must identify the location of, and the dollar amount of credit attributable to, each project within each county. On or before November fifteenth of 1998 and each subsequent year, the commissioner shall determine the estimated amount of the distribution to be made to each county in the following year under section 57-35.3-09 and shall certify that amount to the county auditor.

SECTION 10. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first four taxable years beginning after December 31, 1998, and is thereafter ineffective.

Approved April 8, 1999
Filed April 8, 1999

CARRIAGE

CHAPTER 91

HOUSE BILL NO. 1441

(Representatives Mickelson, Grumbo, Dorso)

(Senators Cook, O'Connell)

CONTRACT CARRIER SAFETY STANDARDS

AN ACT to provide for minimum safety standards for passenger contract carriers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Safety standards for passenger contract carriers. The highway patrol shall establish minimum safety standards for passenger contract carriers transporting fewer than fifteen passengers. The safety standards must include provisions for driver qualifications; motor vehicle inspection, maintenance, and repair; hours of service; drug and alcohol testing; and insurance. In this section, "contract carrier" means a person engaged in the business of carrying passengers for hire and in that business does not operate on a fixed route. The term does not include a person who makes a single daily round trip to commute to and from work, a person transporting only schoolchildren and teachers, a person operating ambulance or funeral services, a person who on occasion and not as a regular business enterprise transports one or more passengers for pay, a person operating stretched sedan-type limousines, nor a person operating a taxicab service using vehicles with a seating capacity of fewer than seven passengers.

Approved April 1, 1999

Filed April 2, 1999

CORPORATIONS

CHAPTER 92

HOUSE BILL NO. 1144

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAW REVISIONS

AN ACT to create and enact section 10-04-08.4 of the North Dakota Century Code, relating to filing requirements for federal covered securities; and to amend and reenact sections 10-04-02, subsections 4 and 5 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06, 10-04-07.1, 10-04-08, 10-04-08.1, 10-04-08.2, 10-04-08.3, 10-04-09, 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-10.3, 10-04-11, 10-04-12, 10-04-14, 10-04-16.1, 10-04-17, and 10-04-18 of the North Dakota Century Code, relating to definitions, administration, and registration of securities under the Securities Act of 1951, advertising of and statements about securities, federal covered securities, suspensions and revocation of securities registrations, registration of dealers, agents, investment advisers, and investment adviser representatives, suspension and revocation of registrations of dealers, agents, investment advisers and investment adviser representatives, hearing provisions, securities investigations, consent to service of process, remedies available to investors, and penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁹ **SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.
2. "Commissioner" means the securities commissioner of this state.
- ~~2.~~ 3. "Dealer" means ~~every~~ a person, other than a salesman an agent, who engages in this state, either for all or part of the person's time: engaged

⁵⁹ Section 10-04-02 was also amended by section 3 of House Bill No. 1145, chapter 93.

in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account.

- a. ~~Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or~~
 - b. ~~Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.~~
4. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.
 5. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.
3. 6. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:
- a. An investment adviser representative.
 - b. A bank, savings institution, or trust company.
 - c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
 - d. A broker or dealer or its ~~salesman~~ agent whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.
 - e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication of general, regular, and paid circulation or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
 - f. A federal covered adviser.

manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

- b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
 - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
6. 9. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
- a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
 - b. No money or other tangible property is given for the option; and
 - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.
7. 10. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, or any other unincorporated organization.
11. "Registered agent" means an agent registered under this chapter.
8. 12. "Registered dealer" means a dealer registered under this chapter.
9. ~~"Registered salesman" means a salesman registered under this chapter.~~
40. 13. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
41. ~~"Salesman" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if the person otherwise comes within the definition.~~

- ~~42.~~ 14. "Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.
- ~~43.~~ 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 4 and 5 of section 10-04-03 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. All fees collected under this chapter must be deposited in the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All an investor restitution fund, and all other civil penalties and moneys collected, including those collected for the reasonable expenses for the administration of a particular case, pursuant to an administrative action, court order or judgment, including investigation costs and attorney's fees in a securities action brought by the commissioner, must be deposited in the general fund.
5. The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a nonrefundable fee to be set by the commissioner by rule, which may not exceed two of one hundred fifty dollars.

SECTION 3. AMENDMENT. Section 10-04-04 of the North Dakota Century Code is amended and reenacted as follows:

10-04-04. Registration of securities. It is unlawful for any person to sell, or offer for sale, any securities security in this state; except those unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05; those sold in transactions exempt under section 10-04-06, or those registered by description under section 10-04-07 or by announcement under section 10-04-07.1; unless such securities have been registered by qualification as provided in section 10-04-08 or it is a federal covered security.

SECTION 4. AMENDMENT. Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

10-04-05. Exempt securities. Sections 10-04-04, 10-04-07, 10-04-07.1, and 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.
2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.
3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof; ~~provided, however, that a corporation or limited liability company issuing securities exempted under this subsection and which has not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or~~

of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars.

5. Securities Any security issued by a any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes and not for pecuniary profit; provided that prior to any offer of such security each person must meet the following conditions:
 - a. Apply for and obtain the written approval of the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
 - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
 - d. Must not pay a commission or other remuneration, directly or indirectly, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
 - e. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval.

6. Securities issued by an issuer which meets all of the following conditions:
 - a. If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.
 - b. A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat. 881; 15 U.S.C. 78a et seq.] and has been so registered for the three years immediately preceding the offering date.
 - e. Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (2) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds five percent of the issuer's and its

consolidated subsidiaries' total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days.

- d. The issuer has had annual consolidated net income before extraordinary items and the cumulative effect of accounting changes as follows: (1) at least one million dollars in four of its last five fiscal years including its last fiscal year, and (2) if the offering is of interest-bearing or of fixed or floating rate dividend securities, at least one and a half times its annual interest and dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds for its last fiscal year. Floating rate dividend shall be calculated with reference to interest rates in the marketplace at the time of the offering. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.
- e. If the offering is of stock or shares other than preferred stock or shares, and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares other than preferred stock or shares, with respect to (1) the number of votes per share, and (2) the right to vote on the same general corporate decisions.
- f. If the offering is of stock or shares other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least one thousand two hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners.
- g. Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York stock exchange, inc., or the American stock exchange, inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of subdivision e need be met for only five years and the annual net earnings requirement of paragraph 4 of subdivision d shall be two hundred fifty thousand dollars.
- h. And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities other than deferred income taxes, deferred investment tax credits, capital stock, and surplus at the end of each of its last five fiscal years, the net income requirement of paragraph 2 of subdivision d, but before deduction for interest expense, shall be one and a quarter times its annual interest expense. "Finance company" means a company engaged directly or through

consolidated subsidiaries primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand or not more than twelve years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

- i. If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.
7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is eligible for discounting by federal reserve banks, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.
 8. 7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as the commissioner may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.
 9. 8. Securities, including patronage dividends or refunds, issued by any cooperative ~~formed~~ organized under the statutes of the state of North Dakota ~~this state~~.
 10. 9. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
 11. 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 10, if the collateral securities equal in fair value at least one hundred

twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby. ~~Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities and pay a filing fee to the commissioner of twenty-five dollars. Unless the commissioner makes an order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.~~

- ~~42.~~ 11. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.
- ~~43.~~ 12. Securities issued by a venture capital corporation or limited liability company organized under chapter 10-30.1.
- ~~44.~~ 13. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.
- ~~45.~~ 14.
- a. Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, listed or designated, or approved for listing or designation upon notice of issuance on:
 - (1) The New York stock exchange;
 - (2) The American stock exchange;
 - (3) The national association of securities dealers automated quotation national market system; ~~or~~
 - (4) Tier I of the Philadelphia stock exchange;
 - (5) Tier I of the Pacific stock exchange;
 - (6) Chicago board options exchange; or
 - (7) Any other stock exchange or automated quotation system which the commissioner approves by rule;
 - b. Any other security of the same issuer which is of senior or substantially equal rank;

- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that ~~the exchange, system, or particular security does not comply with paragraphs 4 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system it would be in the public interest.~~

46. 15. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

⁶⁰ **SECTION 5. AMENDMENT.** Section 10-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt; ~~provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain the commissioner's permission to such sale, unless such securities are exempted under section 10-04-05.~~
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or ~~salesman~~ agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or ~~salesman~~ agent participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.

⁶⁰ Section 10-04-06 was also amended by section 5 of House Bill No. 1045, chapter 50, and section 1 of House Bill No. 1154, chapter 94.

4. ~~Stock Securities~~ dividends or other distributions by a corporation or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or membership interest of a limited liability company to or among its own stockholders or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, where no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution ~~or institutional buyer,~~ or to a dealer, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate or limited liability company assets in consideration of the issuance of securities of another corporation or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
 - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
 - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.
 - c. ~~A nationally recognized~~ Such securities are listed in the standards and poor's standard corporation descriptions, Moody's industrial manual approved by the commissioner contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal

~~year preceding that date or the most recent year of operations, Moody's bank and finance manual, Moody's transportation manual, Moody's public utility manual, or Fitch's individual stock bulletin.~~

- d. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
 - e. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than ~~twenty-five~~ thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
 - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.

~~Provided, however, that the~~ The commissioner may ~~by rule or order,~~ as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the ~~conditions~~ condition in ~~paragraphs~~ paragraph ~~1; 2, and 3 with or without the substitution of a limitation on remuneration.~~

- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
 - (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except reasonable and customary commissions paid by the issuer to a dealer ~~or salesman~~ and agent registered ~~under this chapter~~

or others who the commissioner may designate by rule in this state in connection with the offer or sale of the security to a resident of this state.

- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation, ~~other than~~ except tombstone advertisements ~~that approved by the commissioner shall prescribe by rule,~~ is used in connection with any offers or sales.
- (5) ~~At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.~~
- ~~(6)~~ (6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.
- ~~(7)~~ (6) The gross proceeds of the offering may not exceed ~~five hundred thousand~~ one million dollars.
- ~~(8)~~ (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- ~~(9)~~ (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

~~Provided, however, that the~~ The commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6 and 7.

- c. ~~The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.~~
- d. The exemptions provided under subdivisions a; and b; ~~and e~~ may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:

- (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
 - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
 - (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.
 - (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
 - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
 - f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company ~~may be exempted by the securities commissioner~~ if the corporation or limited liability company is organized under ~~chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended;~~ the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 ~~may be exempted by the securities commissioner~~ if

the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.

11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan; ~~provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.~~
12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.
13. The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30.1.
14. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
15. 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.
16. The distribution of a prospectus or similar disclosure document by an issuer to "test the waters" with an offer of a security for the sole purpose of discussing possible business strategies or economic development or soliciting potential indications of interest from prospective purchasers if the issuer:
 - a. Is organized under the laws of this state and operates its principal place of business in this state or is a person who is a member of the North Dakota private capital investment network or multistate angel capital electronic network who has registered with the commissioner and who offers, sells, purchases, or exchanges only securities that are registered with the commissioner or the securities and exchange commission.
 - b. Does not engage in or propose activities for petroleum exploration, oil production, extractive mining, or any blind pool offering without a specific business purpose.
 - c. Discusses potential business strategies and economic development or solicits indications of potential interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state or involving a resident of this state unless the person who

receives the commission or fee is registered as a dealer or sales agent in this state.

- d. Intends to file an application to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in regulation A or rule 504 of regulation D of the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.
- e. Files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- f. Obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- g. Stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- h. Does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration in this state.
- i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:

NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED UNTIL AFTER THESE SECURITIES ARE REGISTERED OR QUALIFIED WITH THE SECURITIES COMMISSIONER OF THIS STATE AND WITH THE SECURITIES AND EXCHANGE COMMISSION.

NO SALES OF THESE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL AFTER DELIVERY OF A PROSPECTUS THAT INCLUDES ADDITIONAL INFORMATION ABOUT THE OFFERING.

A PROSPECTIVE INVESTOR WHO EXPRESSES AN INTEREST IN THIS INVESTMENT OR PROJECT IS

NOT OBLIGATED OR COMMITTED TO INVEST
MONEY OR PURCHASE SECURITIES.

- j. Does not know and, in the exercise of reasonable care, could not have known that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:
- (1) Been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration, offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts; or
 - (2) Been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or a similar financial crime.
17. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.
18. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
- a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
 - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
 - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.

- d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:

- (a) The name, address, and telephone number of the issuer of the securities;
 - (b) The name, a brief description, and price, if known, of any security to be issued;
 - (c) A brief description of the business of the issuer in twenty-five words or less;
 - (d) The type, number, and aggregate amount of securities being offered;
 - (e) The name, address, and telephone number of the person to contact for additional information; and
 - (f) A statement that:
 - [1] Sales will only be made to accredited investors;
 - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
- (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
19. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

SECTION 6. AMENDMENT. Section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-07.1. Registration by announcement - Secondary.

1. Securities that have been outstanding and in the hands of the public for not less than one year as the result of prior original registration in North Dakota or through securities and exchange commission registration, by the issuer, or by the underwriter on behalf of an issuer, are entitled to registration by announcement in the manner and subject to the conditions provided by this section.

In addition to the foregoing, stock, having equal voting rights with other classes, of life insurance companies may also qualify for registration under this section provided the company has been in continuous operation for twenty years immediately preceding the date of filing for registration and provided further that in addition to supplying the information required by subdivisions a through c of subsection 2 the applicant can supply all of the following:

- a. A balance sheet and an earnings statement showing statutory net earnings after all dividends (returned premiums) to policyholders and after all expenses including state and federal income taxes for the fiscal period ended not more than twelve months prior to the filing date upon which either an unqualified or a qualified opinion has been expressed by a certified public accountant; provided, however, that any qualification of opinion relates only to generally accepted principles of accounting which may have been modified to meet the reporting requirements of the various state insurance departments.
 - b. Such balance sheet separates the surplus account into its component parts and shows a positive balance in the accumulated unrestricted retained earnings account, on statutory basis.
 - c. Earnings statements for the four fiscal years immediately preceding the beginning date of the earnings statement required in subdivision a prepared by the same certified public accountant showing statutory net earnings after the deductions enumerated in subdivision a for each fiscal year; provided, however, that these statements need not be accompanied by an unqualified or a qualified opinion of the certified public accountant unless such certified public accountant did actually perform an audit of the company for any year or years covered by the earnings statements in which case the requirements of subdivision a apply for the year or years so audited.
 - d. A statement prepared by a certified public accountant or actuary showing a net gain in insurance in force for each of the last five fiscal years.
2. Securities entitled to registration by announcement may be registered only by a dealer registered in the office of the commissioner as provided for in section 10-04-10 by filing in the office of the commissioner a written announcement of intention to trade in the securities; ~~which~~

announcement may be given by telegram sent to the commissioner by the dealer, containing the following:

- a. Name of issuer and location of the headquarters or principal office.
 - b. A brief description of the security, including price and current earnings.
 - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
 - d. A ~~statement that a balance sheet not more than twelve months old has been or will be mailed to the commissioner.~~
 - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.
3. The filing of such announcement in the office of the commissioner constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of twenty-five dollars ~~within thirty-six hours after the time of such filing.~~ Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered in the office of the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.
4. ~~Nothing in this section shall be held or construed to require registration of securities under this section after said securities have been registered by description or qualification as provided in section 10-04-07 or 10-04-08 for one year after registration.~~ Securities registered pursuant to section 10-04-07 or 10-04-08 become eligible for trading in the secondary market at current market prices upon completion of the original offering when said securities are outstanding and in the hands of the public and remain so until the end of the registration year when renewal for secondary is permissible. Notification of completion of initial offering should be sent to the commissioner when the offering is completed requesting change to secondary.

SECTION 7. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by

qualification must be made by the issuer of the securities or by a registered dealer by filing in the office of the commissioner:

1. An application for registration which must be made in writing or on forms prescribed by the commissioner and which must contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.
 - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.
 - c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
 - d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
 - e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
 - f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
 - g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if

otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any

securities of the issuer have been within two years or are to be issued in payment.

- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
 - n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
 - o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.
 - p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. ~~a.~~ Payment of a ~~registration~~ filing fee for each security or class of security to be registered as follows:
- ~~(1)~~ a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - ~~(2)~~ b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - ~~(3)~~ c. In no event may such ~~registration~~ filing fee be less than one hundred dollars for each security or class of security to be registered. If the application for ~~registration~~ filing is denied, such ~~registration~~ filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.

- (4) d. Provided, further, that any applicant may register additional increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the registration certificate of effectiveness at the same reduced fee, which must be computed as provided in paragraphs 4 subdivisions a and 2 b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
- (5) e. For the renewal of the registration of securities for additional periods of one year there must be paid a renewal fee of one hundred dollars.
- b. (1) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] may register an indefinite number or amount of securities by including on the facing sheet of its registration statement a declaration that an indefinite number or amount of securities is being registered by such registration statement.
- (2) At the time a declaration is filed there must be paid a registration fee of five hundred dollars.
- (3) Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes.
- (4) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] having an effective registration statement relating to an indefinite number or amount of securities shall, within sixty days after the end of any fiscal year and after the registration is terminated, file a report of the aggregate public offering price of securities sold in this state during the fiscal year and shall pay a filing fee of one-twentieth of one percent of such amount, but in no case may such filing fee be less than one hundred dollars nor more than two hundred fifty dollars. Failure to file the report and fee is cause for the issuance of a stop order.
3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.
4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register

securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the registration fee be returned.

Registration under this section is effective for a period of one year; ~~except that the effectiveness of a registration for an indefinite number or amount of securities under paragraph 4 of subdivision b of subsection 2 shall continue until terminated by either the commissioner or the issuer by filing within one hundred twenty days of the end of its fiscal year, an updated prospectus, a balance sheet, and a statement of income of the issuer.~~

SECTION 8. AMENDMENT. Section 10-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.1. Authority of commissioner as to registration of securities. The right to sell securities in this state shall not be granted in any case where it appears to the commissioner that the sale of such securities would work a fraud or deception on purchasers or the public, or that the proposed disposal of the securities is on unfair terms, or if the proposed plan of business of the applicant appears to be unfair, unjust, or inequitable. When the commissioner deems it necessary the commissioner has power, in connection with pending applications and at the expense of the applicant, to require the applicant to furnish additional information, to order appraisals, audits, or other examinations and reports, and, where the applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make an investigation of the books, records, property, business, and affairs of such issuer.

Upon compliance with all the provisions of this chapter relating to applications for approval or registration by qualification and the requirements of the commissioner, the commissioner shall either approve or register such securities or if the commissioner is of the opinion that sale of the securities would be contrary to the provisions of this section, the commissioner shall deny the application. The commissioner has power to place such conditions, limitations, and restrictions on any approval or registration as may be necessary to carry out the purposes of this chapter. Registration or approval must be by entry in the register of securities, which entry must show the securities approved or registered and for whom approved or registered, and the conditions, limitations, and restrictions, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations, and restrictions. Included among any other reasonable conditions, limitations, and restrictions which the commissioner may deem necessary are the following:

1. The commissioner may by rule, order, or directive require that any security issued or to be issued to a promoter for a consideration different from the public offering price, or to any person for a consideration other

than cash, be deposited in escrow with the commissioner or some other depository satisfactory to the commissioner under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commissioner to have been held actually earned on the investment in any common stock as held. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities have been paid in full.

2. The commissioner may by rule, order, or directive require that all the proceeds from the sale of the approved or registered security be impounded until the issuer receives a specified amount of funds, which amount shall be determined by the commissioner.
3. The commissioner may refuse to allow the granting of any stock options to any person, but if such an option is allowed, the commissioner may prescribe that the price at which the option can be exercised shall be increased each year in which it is not exercised in an amount to be determined by the commissioner and that the option shall lapse altogether after a specified period to be set by the commissioner.
4. If any stock is given for past services or consideration, the commissioner may require that the issuer submit to the commissioner a strict and comprehensive evaluation of such past services or consideration and may limit the amount of stock so given in order that it is commensurate with the value of the past services and in no case shall the commissioner allow stock to be given for future services.
5. The commissioner may limit the price at which the securities, either of par or no par value, may be sold, and if such securities are quoted by a recognized quotation list such price shall be limited to an amount not unreasonably in excess of the amount quoted.
6. The commissioner may by rule, order, or directive limit compensation, and all other expenses paid or incurred, directly or indirectly, in connection with the organization, approval, registration, or sale of securities, to an amount not in excess of compensation paid or expenses incurred in connection with the organization, approval, registration, or sale of similar securities.
7. If more than one class of stock is issued and one class of stock is issued for the purpose of giving preference as to dividends, the commissioner may require that a greater consideration, commensurate with the value of the dividend preference, be paid per share for such stock.
8. The commissioner may by rule, order, or directive require that any security approved or registered be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved by the corporation, partnership, or limited liability company for any period up to three years specified in the rule ~~or~~, order, or directive.

9. So long as the approval or registration is effective, the commissioner may by rule or order require the person who filed for approval or registration to file reports, not more often than quarterly, to provide reasonably current information upon the matters contained in the application or registration statement, and to disclose the progress of the offering.
10. The commissioner has the authority to disapprove an application for approval or registration of any security when it is established that one or more of the promoters are not of good business reputation or character.

The provisions of this section do not apply to a federal covered security.

SECTION 9. AMENDMENT. Section 10-04-08.2 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.2. Advertising matter - Regulations.

1. No circular, prospectus, advertisement, form or market letter, report, document, pamphlet, leaflet, script, or other written or printed matter, or any communication by radio, television, or similar communications media, hereinafter referred to as advertising matter, used in connection with the offer, sale, ~~or purchase of~~ or rendering investment advice with respect to any security in this state shall be published, circulated, distributed, broadcast, or caused to be published, circulated, distributed, or broadcast in any manner unless and until such advertising matter shall have been filed with the commissioner at least five business days prior to its first publication, circulation, distribution, or broadcast, unless such advertising matter pertains to a security or transaction exempted in 10-04-05 or 10-04-06, relates to a federal covered security, or is used by a federal covered adviser.
2. The commissioner may by rule or order and subject to such terms and conditions as may be prescribed therein exempt any advertising matter from the filing requirement imposed under subsection 1 if the commissioner finds that the imposition of the filing requirement is not necessary or appropriate in the public interest or for the protection of investors.
3. The commissioner has the power to disapprove any advertising matter filed pursuant to subsection 1, which the commissioner deems in conflict with the purposes of this chapter.
4. Nothing in this section or section 10-04-04 shall be construed to prohibit the publication or distribution to the public of a preliminary prospectus or preliminary summary prospectus under the Securities Act of 1933, as amended prospectus, provided that no solicitation is made or order or conditional order accepted prior to registration in this state, and provided also that, unless the preliminary prospectus relates to a federal covered security, the following legend appears on each such prospectus or preliminary prospectus:

A registration statement relating to these securities has been filed ~~with the securities and exchange commission~~ but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor

may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation, or sale would be unlawful prior to registration or ~~qualification~~ approval under the securities laws of any such state.

SECTION 10. AMENDMENT. Section 10-04-08.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.3. Unlawful representations concerning registration or exemption.

1. Neither the fact that an application for approval under sections 10-04-05 or 10-04-06 or registration under sections 10-04-07, 10-04-07.1, 10-04-08, or 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that a security or person is effectively approved or registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.
2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

SECTION 11. Section 10-04-08.4 of the North Dakota Century Code is created and enacted as follows:

10-04-08.4. Federal covered security. A federal covered security may be offered and sold in this state without registration, subject to the following:

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:
 - a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner with a consent to service of process.
 - b. If the notice filing is for a definite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and one-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security. In no event, however, may such filing fee be less than one hundred dollars for each security or class of security.
 - c. If the notice filing is for an indefinite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of five hundred dollars for each security or class of security.

4. The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, as amended, if it is found to be in the public interest or there is a failure to comply with any of the provisions stated in this section.

SECTION 12. AMENDMENT. Section 10-04-09 of the North Dakota Century Code is amended and reenacted as follows:

10-04-09. Suspension or revocation of registration of securities. The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that any provisions of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, or if the commissioner finds any of the following:

1. The sale of such securities would work or tend to work a fraud, or deception upon the purchasers thereof or the public, or that the disposal of the securities is on unfair terms, or if the plan of business of the applicant appears to be unfair, unjust, or inequitable.
2. The issuer of such securities is insolvent, or has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law.
3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities.
4. The issuer of such securities has refused to permit an examination into its affairs as provided in this section or has failed to furnish the commissioner any further information required pursuant to this section.
5. Securities registered by description were not entitled to registration by description.
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

If the commissioner has reasonable grounds to believe that the registration of any securities registered under this chapter should be revoked upon any ground specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or the commissioner's agent may conduct such an examination only if the information sought by such examination could not be obtained from other readily available sources. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or the issuer's income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, the commissioner may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the commissioner shall point out or to be brought down to the latest practicable date. Such

examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

If the commissioner has reasonable grounds to believe that the registration of any securities under this chapter should be revoked on any ground specified in this section, the commissioner may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such suspension order shall be effective for more than thirty days and such an order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities ~~and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing.~~

If the commissioner finds, after a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds for revoking the registration of certain securities, the commissioner may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities ~~and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing.~~ No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

SECTION 13. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of dealers, ~~salesmen agents, and investment advisers, and investment adviser representatives; notice filings by federal covered advisers.~~ A dealer or ~~salesman agent~~ may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or ~~salesman agent~~ pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:
 - a. The name of the applicant.
 - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
 - c. The form of business organization and the date of organization of the applicant.
 - d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a

statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.

- e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
- f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require. A dealer that is registered under the Securities Exchange Act of 1934 may satisfy this requirement by filing with the commissioner the dealer's most recent financial statements prepared under such Act.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its

officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

~~The Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond or a deposit of cash or other properties approved by the commissioner~~ running to the state of North Dakota conditioned for the faithful compliance by the dealer and the dealer's agents ~~and salesmen~~ with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and the dealer's agents ~~and salesmen~~.

The bond ~~or deposit~~ must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers ~~when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant~~. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer, the commissioner shall notify the applicant of such registration.

2. ~~Salesmen~~ Agent. Application for registration as a ~~salesman~~ an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed in the office of the commissioner and must contain the following information:
 - a. Name and residence and business address of the applicant.
 - b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
 - c. ~~Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.~~
 - d. Applicant's age and education date of birth.
 - e. d. The All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment,

include the nature of the employment and the names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.

- f. ~~e.~~ ~~Other state or federal laws under~~ A list of the states or other jurisdictions with which the applicant has ever been is registered as a dealer or ~~salesman~~ agent of securities, and, if any such registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.
- ~~g.~~ ~~f.~~ Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction or plea.

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation, limited liability company, or partnership, all officers, directors, managers, governors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as a ~~salesman~~ an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within ~~five~~ three years as such ~~salesman~~ agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as a ~~salesman~~ an agent under the provisions of this law. If a ~~salesman~~ an agent proposes to be self-employed, the ~~salesman~~ agent shall specifically state the particular security or securities the ~~salesman~~ agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require that said self-employed ~~salesman~~ agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed ~~salesman~~ agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner. There must be filed with such application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a ~~salesman~~ an agent unless the commissioner finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as a ~~salesman~~ an agent, the commissioner shall immediately notify the ~~applicant~~ dealer of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by the dealer or issuer of a registered salesman agent. ~~The registration of such salesman shall automatically be suspended from the time of termination of such employment until the salesman notifies the commissioner of the salesman's employment by another registered dealer or issuer.~~

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) The person is registered under this chapter.

(2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or

(3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and, during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.

b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:

(1) Name, residence, and business address of the applicant.

(2) If the applicant is a corporation, limited liability company, or association, give full information as to agents officers, partners, managers, and managing officers.

(3) Statement showing each individual named is of good repute and possesses essential experience and education. Information concerning the educational and business background and disciplinary history of all officers, directors, partners, control persons, and owners of five percent or more of the investment adviser.

(4) The plan and character of business, and the proposed method of operation.

- (5) Such other information as may be required.
- c. If the applicant is a foreign corporation, limited liability company, or association, it shall file with its application:
 - (1) A copy of its articles.
 - (2) Certificate showing authorization to transact business.
 - d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.
 - e. There must be filed with such application:
 - (1) A written consent to the service of process upon the commissioner in actions against the investment adviser conforming to the requirements of section 10-04-14.
 - (2) Payment of the prescribed registration fee, which must be returned if registration is refused.
 - (3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of the applicant, as the commissioner may require. An investment adviser that maintains its principal place of business in a state other than this state and that is registered with and in compliance with such state's financial reporting requirements may satisfy this requirement by filing with the commissioner a copy of those financial statements, if any, that are filed by the investment adviser with the state in which it maintains its principal place of business.
 - f. ~~The~~ Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond ~~or a deposit of cash or other properties approved by the commissioner~~ running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond ~~or deposit~~ must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state ~~when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent the applicant.~~ Any such bond must have as surety thereon a surety company authorized to do business in this state.

- d. ~~The~~ All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant for the period of ten years immediately preceding the date of the application.
- e. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with which the applicant has ever been is registered as an investment adviser representative, and, if any registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.
- f. Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction or plea.

There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that: the applicant is not of good business reputation or; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the ~~applicant~~ investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the commissioner of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative ~~notifies~~ is registered by the commissioner of employment by as a representative of another investment adviser or federal covered adviser.

The commissioner may by rule provide for an examination to be taken by the applicant.

- ~~5.~~ 6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must

be mailed to the applicant at the applicant's business address, and if the application is for registration as a ~~salesman~~ an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, ~~salesman's~~ agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.

6. 7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, ~~salesmen~~ agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, ~~salesmen~~ agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires ~~one year from its effective date~~ on May first of each year unless renewed. The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. ~~Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, investment advisers, and investment adviser representatives.~~
7. 8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:

| | | |
|--|--------------------|--------------|
| a. For each dealer | | \$200.00 |
| b. For each salesman <u>agent</u> | \$50.00 | <u>60.00</u> |
| c. For each investment adviser or <u>federal covered adviser</u> | | \$100.00 |
| d. For each investment adviser representative | \$35.00 | <u>50.00</u> |

An application to register as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

SECTION 14. AMENDMENT. Section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.1. Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to

the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- a. To employ any device, scheme, or artifice to defraud the other person; or
 - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; ;
 - e. ~~Acting as principal for the person's own account;~~
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
 3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly to sell any security to or purchase any security from a client; or acting as broker for a person other than the client, knowingly to effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction. The prohibitions of this subsection do not apply to any transaction with a customer of a dealer if the dealer is not acting as an investment adviser in relation to the transaction; or while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.
 - ~~4.~~ 4. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.
 2. In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
 - ~~3.~~ 5. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:
 - a. That the The investment adviser shall not be compensated on the basis of a share of capital gains ~~upon~~, earnings, or capital appreciation of the funds or any portion of the funds of the client. This does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period.
 - b. That ~~no~~ An assignment of the investment advisory contract may not be made by the investment adviser ~~without~~ unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the other party to the contract client.

- c. ~~That the~~ The investment adviser, if a limited liability company or partnership, shall notify shall provide written notice to the other party to the contract client within fifteen days of any change in the membership of the limited liability company or partnership within a reasonable time after the change of ownership in excess of five percent.

Subdivision a does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision b, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a securityholder of the assignor; but, if the investment adviser is a limited liability company or partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

- d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.
4. 6. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:
- a. The commissioner by rule prohibits custody; or
 - b. ~~In the absence of rule, the~~ The investment adviser fails to notify the commissioner that the investment ~~adviser~~ adviser has or may have custody.
5. 7. No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

SECTION 15. AMENDMENT. Section 10-04-10.2 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.2. Conviction not bar to registration - Exceptions. Conviction of an offense does not disqualify a person from registration under this chapter unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 16. AMENDMENT. Section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.3. Postregistration provisions.

1. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records so required must be preserved for three years unless the commissioner prescribes otherwise by rule for particular types of records.
2. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records referred to in subsection 1 are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.
5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

SECTION 17. AMENDMENT. Section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

10-04-11. Suspension or revocation of dealer's, ~~salesman's~~ agent's, investment adviser's, and investment adviser representative's registration.

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative:

 - a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;

- b. Is, in the case of a dealer or investment adviser, insolvent;
- c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
- d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
- e. Has failed to file with the commissioner any financial record required pursuant to section 10-04-10.3, or has refused to permit an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
- f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
- h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative;
- j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment ~~Advisers~~ Advisers Act of 1940; or is the subject of a United States post-office fraud order;
- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;

the person's business address, and, to the registered dealer or registered investment adviser who employs any salesman or investment adviser representative affected by such order final determination of any proceeding under this section. Upon the entry of the summary order, the commissioner shall promptly notify the applicant, as well as the employer or prospective employer if the applicant is an agent or investment adviser representative, that it has been entered and the reasons. The person subject to the order, if desiring a hearing, must make a written request for a hearing to the commissioner within fifteen days after receipt of the notice. Within fifteen days after receipt by the commissioner of a written request the matter will be set for hearing to determine if the order should be modified, vacated, or extended pending a final determination. If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until modified or vacated by the commissioner.

5. If the commissioner finds, after affording a registered dealer, a registered ~~salesman agent~~, a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to censure, suspend, or revoke the registration of such dealer, ~~salesman agent~~, investment adviser, or investment adviser representative, the commissioner may enter an order in the register of dealers, ~~salesmen agents~~, investment advisers, and investment adviser representatives; censuring, suspending, or revoking the registration of such dealer, ~~salesman agent~~, investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, ~~salesman agent~~, investment adviser, or investment adviser representative whose registration is censured, suspended, or revoked thereby at the person's business address and, if the censure, suspension, or revocation is of the registration of a ~~salesman an agent~~, or investment adviser representative, to the registered dealer or registered investment adviser who employs such person. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of the dealer's ~~salesmen agents~~. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of a ~~salesman an agent~~ or investment adviser representative solely because of employment by a dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such person.
6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

SECTION 18. AMENDMENT. Section 10-04-12 of the North Dakota Century Code is amended and reenacted as follows:

10-04-12. Hearings. Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of the securities, and if the application for registration of the securities was filed by a registered dealer, to the registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, ~~salesman agent~~, investment adviser, or investment adviser representative, as provided in section 10-04-10, or censuring, placing limitations, suspending, or revoking the

registration of any person as a registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to that person, and if that person is a ~~salesman~~ an agent or investment adviser representative or an applicant for registration as a ~~salesman~~ an agent or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ that ~~salesman~~ agent or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered mail, returned receipt requested, to the addressee's business address, and the notice must state:
 - a. The order the commissioner proposes to issue.
 - b. The grounds for issuing the proposed order.
 - c. That the person to whom the notice is sent may be afforded a hearing upon request to the commissioner if the request is made within ~~ten~~ fifteen days after receipt of the notice.
2. Whenever a person requests a hearing in accordance with this section, the commissioner shall immediately set a date, time, and place for the hearing and shall ~~forthwith~~ notify the person requesting the hearing. The date set for the hearing must be within ~~fifteen~~ thirty days, but not earlier than ~~five~~ fifteen days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting the hearing.
3. Any hearing conducted under this section must be conducted in accordance with chapter 28-32.
4. If the commissioner does not receive a request for a hearing within the prescribed time, the commissioner may enter a final order which must set forth the findings with respect to the matters involved.

SECTION 19. AMENDMENT. Section 10-04-14 of the North Dakota Century Code is amended and reenacted as follows:

10-04-14. Service of process.

1. Every applicant for registration under this chapter ~~and~~, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under this chapter shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by commissioner,

forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
3. When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 20. AMENDMENT. Section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-16.1. Investigations and subpoenas.

1. The commissioner may:
 - a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative whose affairs are investigated; ~~but the expense so payable may not exceed an amount that the commissioner prescribes by rule.~~

- b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.
2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
 4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 21. AMENDMENT. Section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

10-04-17. Remedies. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, ~~salesman~~, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser who may sue either at law or in equity to recover the full amount paid by such

purchaser, together with all taxable court costs, interest as provided in subsection 2, and reasonable attorney's fees, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if the purchaser no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. Provided:

1. That no action may be brought under this section for the recovery of the purchase price after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation; and
2. That no purchaser shall claim or have the benefit of this section if the purchaser shall have refused or failed to accept, within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:
 - a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.
 - b. In case such securities consist of other than interest-bearing obligations, at the legal rate specified in section 47-14-05, less the amount of any income received on the securities.
3. The provisions of this section do not apply to a violation of section 10-04-08.4.
4. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

SECTION 22. AMENDMENT. Section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

10-04-18. Penalties.

1. Any person who willfully violates any provision of this chapter, except section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.
2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.
4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.
5. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, 10-04-10.1, 10-04-11, and 10-04-15.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 93

HOUSE BILL NO. 1145

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

VIATICAL SETTLEMENT CONTRACTS

AN ACT to create and enact a new subsection to section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts; and to amend and reenact subsections 5 and 13 of section 10-04-02 of the North Dakota Century Code, or in the alternative to amend and reenact subsections 8 and 15 of section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts and foreign currency contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1144 does not become effective, subsections 5 and 13 of section 10-04-02 of the North Dakota Century Code are amended and reenacted as follows:

5. "Issuer" means every person who issues or proposes to issue any security, except that:
 - a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.
 - b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
 - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
 - d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

13. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement

contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 8 and 15 of section 10-04-02 of the North Dakota Century Code as amended by House Bill No. 1144, as approved by the fifty-sixth legislative assembly, are amended and reenacted as follows:

8. "Issuer" means every person who issues or proposes to issue any security, except that:
 - a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.
 - b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
 - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
 - d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's

worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

⁶¹ **SECTION 3.** A new subsection to section 10-04-02 of the North Dakota Century Code is created and enacted as follows:

"Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.1;
- b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
- c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

Approved March 8, 1999
Filed March 8, 1999

⁶¹ Section 10-04-02 was also amended by section 1 of House Bill No. 1144, chapter 92.

CHAPTER 94

HOUSE BILL NO. 1154

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES REGISTRATION

AN ACT to amend and reenact subsection 16 of section 10-04-06 of the North Dakota Century Code, relating to the test the waters security offering exempt transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶² SECTION 1. AMENDMENT. Subsection 16 of section 10-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. a. ~~The distribution of a prospectus or similar disclosure document by~~
An offer, but not a sale, of a security made by or on behalf of an issuer to "test the waters" with an offer of a security for the sole purpose of discussing possible business strategies or economic development or soliciting potential indications an indication of interest from prospective purchasers if the issuer in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
- a. (1) ~~Is~~ The issuer is or will be a business entity organized under the laws of this state and operates its principal place of business in this state or is a person who is a member of the North Dakota private capital investment network or multistate angel capital electronic network who has registered with the commissioner and who offers, sells, purchases, or exchanges only securities that are registered with the commissioner or the securities and exchange commission.
- b. ~~Does not engage in or propose activities for one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration; oil or production, extractive mining, or any blind pool other extractive industries; and is not a blind pool offering without a or other offering for which the specific business purpose or properties cannot now be described.~~
- c. ~~Discusses potential business strategies and economic development or solicits~~

⁶² Section 10-04-06 was also amended by section 5 of House Bill No. 1045, chapter 50, and section 5 of House Bill No. 1144, chapter 92.

- (2) ~~The issuer may solicit~~ indications of ~~potential~~ interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state ~~or involving a resident of this state~~ unless the person who receives the commission or fee is registered as a dealer or ~~sales~~ agent in this state.
- d. ~~Intends to file an application~~
- (3) ~~The issuer intends to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in~~ conduct its offering pursuant to either regulation A or rule 504 of regulation D of, as promulgated by the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.
- e. (4) ~~Files~~ The issuer files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- f. (5) ~~Obtains~~ The issuer obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- g. (8) ~~Stops~~ The issuer stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.

- h. (9) Does The issuer does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration or approval to offer and sell securities in this state.
- i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:
- ~~NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED UNTIL AFTER THESE SECURITIES ARE REGISTERED OR QUALIFIED WITH THE SECURITIES COMMISSIONER OF THIS STATE AND WITH THE SECURITIES AND EXCHANGE COMMISSION.~~
- ~~NO SALES OF THESE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL AFTER DELIVERY OF A PROSPECTUS THAT INCLUDES ADDITIONAL INFORMATION ABOUT THE OFFERING.~~
- ~~A PROSPECTIVE INVESTOR WHO EXPRESSES AN INTEREST IN THIS INVESTMENT OR PROJECT IS NOT OBLIGATED OR COMMITTED TO INVEST MONEY OR PURCHASE SECURITIES.~~
- j. Does not know and, in the exercise of reasonable care, could not have known that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:
- (4) (10) Been The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
- (a) Has been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration; or use of any exemption from registration in connection with the offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts within

five years prior to the filing of the solicitation of interest form; or

- (2) (b) ~~Been~~ Has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, ~~obtaining money under false pretenses, larceny,~~ conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

- (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION

UNDER THE FEDERAL AND STATE
SECURITIES LAWS. NO SALE MAY BE MADE
UNTIL THE OFFERING STATEMENT IS
QUALIFIED BY THE SECURITIES AND
EXCHANGE COMMISSION AND IS
REGISTERED OR APPROVED IN THIS STATE.

(2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its business and products, its address and telephone number and the following legends:

(a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;

(b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and

(c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.

c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 95

SENATE BILL NO. 2271

(Senators W. Stenehjem, Krebsbach)

CORPORATION AND LLC REVISIONS

AN ACT to create and enact a new subsection to section 10-19.1-10, a new subsection to section 10-19.1-65, a new subsection to section 10-19.1-87, a new subsection to section 10-32-13, a new subsection to section 10-33-06, a new subsection to section 10-33-17, a new subsection to section 45-10.1-04, sections 45-10.1-04.1, 45-10.1-51.1, 45-10.1-54.1, 45-10.1-58.1, 45-10.1-58.2, 45-13-04.1, 45-13-04.2, 45-15-03.1, 45-15-03.2, 45-22-08.1, 45-22-20.1, 45-22-21.1, and chapter 45-23 of the North Dakota Century Code, relating to business corporations, nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, and limited liability limited partnerships; to amend and reenact sections 10-06.1-12, 10-06.1-13, 10-06.1-17, 10-06.1-27, 10-19.1-01, subsection 2 of section 10-19.1-05, section 10-19.1-11, subsection 1 of section 10-19.1-13, section 10-19.1-23, subsection 2 of section 10-19.1-30, section 10-19.1-61, subsection 5 of section 10-19.1-61.1, subsection 1 of section 10-19.1-63, subsection 4 of section 10-19.1-64, section 10-19.1-66, subsection 2 of section 10-19.1-68, subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73.2, subsection 1 of section 10-19.1-76.2, subsection 3 of section 10-19.1-83, subsection 1 of section 10-19.1-84, subsection 3 of section 10-19.1-88, sections 10-19.1-91, 10-19.1-96, 10-19.1-97, 10-19.1-98, 10-19.1-99, 10-19.1-100, 10-19.1-101, 10-19.1-102, 10-19.1-103, subsection 2 of section 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112, subsection 1 of section 10-19.1-113.1, sections 10-19.1-129, 10-19.1-137, 10-19.1-139, subsection 1 of section 10-19.1-146, sections 10-19.1-147, 10-30-05, 10-30.1-04, subsection 1 of section 10-31-02.1, subsection 2 of section 10-31-11, sections 10-31-13, 10-32-02, 10-32-06, 10-32-07, subsection 1 of section 10-32-10, subsection 5 of section 10-32-11, sections 10-32-17, 10-32-22, 10-32-23, 10-32-28, 10-32-30, 10-32-31, 10-32-32, subsection 2 of section 10-32-35, sections 10-32-36, 10-32-37, 10-32-38, 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 1 of section 10-32-44, section 10-32-48, subsection 2 of section 10-32-48.1, sections 10-32-49, 10-32-50, subdivision d of subsection 1 of section 10-32-51, sections 10-32-54, 10-32-55, 10-32-56, 10-32-57, subsection 7 of section 10-32-58, sections 10-32-59, 10-32-60, 10-32-61, 10-32-62, subdivision c of subsection 1 of section 10-32-64, subsection 1 of section 10-32-66, subsection 2 of section 10-32-67, sections 10-32-68, 10-32-70, 10-32-71, 10-32-72, 10-32-74, 10-32-75, 10-32-76, subsection 1 of section 10-32-78, subdivision a of subsection 1 of section 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80, 10-32-81, 10-32-82, 10-32-83, subsection 1 of section 10-32-84, subsection 2 of section 10-32-85, section 10-32-86, subdivision b of subsection 2 of section 10-32-87, sections 10-32-88, 10-32-89, 10-32-94, 10-32-95, 10-32-99, 10-32-100, subdivision b of subsection 1 of section 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104, 10-32-105, subdivision a of subsection 2 of section 10-32-106, sections 10-32-107, 10-32-109, paragraph 1 of subdivision b of subsection 1 of section 10-32-112, subdivision b of subsection 3 of section 10-32-113, sections 10-32-114,

10-32-119, subsection 2 of section 10-32-122, sections 10-32-131, 10-32-140, 10-32-142, subsection 2 of section 10-32-149, subsection 1 of section 10-32-150, section 10-33-01, subsection 1 of section 10-33-10, subsection 4 of section 10-33-13, section 10-33-49, subsection 3 of section 10-33-50, subsection 3 of section 10-33-54, section 10-33-84, subsection 2 of section 10-33-87, sections 10-33-95, 10-33-130, 34-09-06, 45-10.1-01, subsection 1 of section 45-10.1-02, sections 45-10.1-08, 45-10.1-09, 45-10.1-10, 45-10.1-11, 45-10.1-14, 45-10.1-15, 45-10.1-36, 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-55, 45-10.1-58, 45-11-08.2, 45-13-01, subsection 2 of section 45-13-03, sections 45-13-05, 45-13-06, 45-14-01, subsection 1 of section 45-15-03, subsection 1 of section 45-15-06, sections 45-22-01, 45-22-03, 45-22-04, 45-22-05, 45-22-06, 45-22-07, 45-22-10, 45-22-11, 45-22-12, 45-22-13, 45-22-14, 45-22-15, 45-22-16, 45-22-17, 45-22-18, 45-22-20, subsection 1 of section 45-22-21, sections 45-22-22, 45-22-23, subsection 2 of section 45-22-24, sections 45-22-25, 45-22-26, subdivision b of subsection 1 of section 45-22-27, subsection 6 of section 47-22-02, sections 47-25-03, and 61-13-03.1 of the North Dakota Century Code, relating to farm corporations, business corporations, development corporations, venture capital corporations, professional associations, limited liability companies, nonprofit corporations, labor unions, limited partnerships, fictitious partnership names, general partnerships, limited liability partnerships, trademarks, trade names, and the organization of corporations for irrigation purposes; and to repeal sections 45-10.1-54 and 45-22-08 of the North Dakota Century Code, relating to the names of foreign limited partnership and piercing the limited liability shield of limited liability partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶³ **SECTION 1. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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.

⁶³ Section 10-06.1-12 was also amended by section 6 of House Bill No. 1045, chapter 50.

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~~ the corporation's 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.

⁶⁴ **SECTION 2. AMENDMENT.** Section 10-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-13. Applicability of North Dakota Business Corporation Act. ~~Chapters Chapter 10-19.1 and 10-23 are applicable~~ applies 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~~ if inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with ~~the provisions of chapters chapter 10-19.1 and 10-23.~~

SECTION 3. AMENDMENT. Section 10-06.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁶⁴ Section 10-06.1-13 was also amended by section 7 of House Bill No. 1045, chapter 50.

10-06.1-17. Annual report - Contents - Filing requirements. Before April ~~fifteenth~~ sixteenth 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~~ an annual report executed by ~~its~~ the corporation's or limited liability company's president, a vice president, secretary, or treasurer containing all of. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include 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~~ the corporation's or limited liability company's registered agent in this state at that address.
3. With respect to each corporation:
 - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and services, if any, within a class.
4. 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.
5. 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.
6. 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].

7. 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.
8. 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.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

SECTION 4. AMENDMENT. Section 10-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-27. Protection of minority members. 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~~ bylaws, the instrument ~~which that~~ transferred the membership interest to the member, or are not the subject of a ~~business continuation~~ member-control agreement or ~~an other~~ agreement between that member and the limited liability company, ~~then~~ the disposition of ~~such~~ the 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~~ the remaining members. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, ~~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. If 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~~ the fair price, the limited

liability company ~~shall~~ must be dissolved and the assets of the limited liability company ~~shall~~ must be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to ~~their~~ the member's membership interest ownership. For the purpose of this section, a fair price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 5. AMENDMENT. Section 10-19.1-01 of the 1997 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 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. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.
3. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code of the actual office location, which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
- ~~3.~~ 4. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, 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. 5. "Board" or "board of directors" means the board of directors of a corporation.
- ~~5.~~ 6. "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.~~ 7. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
- ~~7.~~ 8. "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.
- ~~8.~~ 9. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
- ~~9.~~ 10. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or an exchange.
11. "Constituent organization" means a corporation, foreign corporation, or a domestic or foreign limited liability company that is a party to a merger or an exchange.
- ~~40.~~ 12. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- ~~44.~~ 13. "Director" means a member of the board.
- ~~42.~~ 14. "Distribution" means a direct or indirect transfer of money or other property, other than ~~its~~ a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of ~~its~~ the corporation's shareholders in respect of ~~its~~ the corporation's shares, and 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~~ the corporation's shares, or otherwise.
- ~~43.~~ 15. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
- ~~44.~~ 16. "Filed with the secretary of state" means that either, except as otherwise permitted by law or rule, a signed original or a legible facsimile copy telecommunication of a signed original of a request for reserved name; or a signed original of all other documents meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, has been was delivered to the secretary of state and ~~has been~~ was 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.
- ~~45.~~ 17. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
- ~~46.~~ 18. "Foreign limited liability company" means a limited liability company organized for profit ~~that~~ which 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.

- 47: 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 48: 20. "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.
- 49: 21. "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.
- 20: 22. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
- 24: 23. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
- 22: 24. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
- 23: 25. "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:

- (1) When mailed to the person at an address designated by the person or at the ~~last known~~ last-known address of the person; or
- (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 then residing there.

- b. Notice is given by mail when deposited in the United States mail with sufficient postage affixed.
 - c. Notice is deemed received when it is given.
- ~~24.~~ 26. "Officer" means an individual who is eighteen years of age or more who is elected, appointed, or otherwise designated as an officer by the board, or deemed elected as an officer pursuant to section 10-19.1-56.
- ~~25.~~ 27. "Organization" means, whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- ~~26.~~ 28. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
- ~~27.~~ 29. "Owners" means:
- a. Shareholders in the case of a corporation; and
 - b. Members in the case of a limited liability company or a nonprofit corporation.
- ~~28.~~ 30. "Ownership interests" means:
- a. Shares in the case of a corporation;
 - b. Membership interests in the case of a nonprofit corporation or limited liability company; and
 - c. Similar interests in other organizations.
- ~~29.~~ 31. "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.
- ~~30.~~ 32. "Principal executive office" means an office where the elected or appointed president of a corporation has an office, or if the corporation has no elected or appointed president, then the registered office of the corporation.
- ~~34.~~ 33. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.
- ~~32.~~ 34. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;

- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
 - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
- ~~33.~~ 35. "Security" has the meaning given in section 10-04-02.
- ~~34.~~ 36. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to ~~its~~ a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
- ~~35.~~ 37. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- ~~36.~~ 38. "Shareholder" means a person registered on the books or records of a corporation or ~~its~~ the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- ~~37.~~ 39. "Signed" means that the signature of a person ~~has been~~ is placed on a document, as provided in subsection 39 of section 41-01-11, and:
- a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document ~~has been~~ is 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 as required under section 10-19.1-46~~ or the holders of the required proportion or number of the voting power of the shares present and entitled to vote shareholders as required under section 10-19.1-74; and
 - b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.
- ~~38.~~ 40. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- ~~39.~~ 41. "Subsidiary" of a specified corporation means:
- a. A corporation having more than fifty percent of the voting power of ~~its~~ the corporation's 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~~ the limited liability company's membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

40. 42. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
43. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.
44. 44. "Vote" includes authorization by written action.
42. 45. "Written action" means a written document signed by all of the persons required to take the action, or 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~~ the counterparts.

⁶⁵ **SECTION 6. AMENDMENT.** Subsection 2 of section 10-19.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 or 10-19.1-03 may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided ~~in chapter 10-23~~ for under section 10-19.1-147, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand ~~has been~~ was filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

⁶⁶ **SECTION 7.** A new subsection to section 10-19.1-10 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Subsection 5 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

⁶⁷ **SECTION 8. AMENDMENT.** Section 10-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-11. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds

⁶⁵ Section 10-19.1-05 was also amended by section 8 of House Bill No. 1045, chapter 50.

⁶⁶ Section 10-19.1-10 was also amended by section 9 of House Bill No. 1045, chapter 50.

⁶⁷ Section 10-19.1-11 was also amended by section 10 of House Bill No. 1045, chapter 50.

that the articles of incorporation conform to law and ~~that~~ all fees ~~have been~~ are paid under ~~chapter 40-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the incorporators or ~~their~~ the incorporators' representative.

SECTION 9. AMENDMENT. Subsection 1 of section 10-19.1-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
 - c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the corporation may not be incorporated under this chapter.
 - d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the corporation is incorporated for a purpose other than a legal business purpose for which a corporation may be incorporated under this chapter.
 - e- f. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a document ~~which~~ that complies with subsection ~~2~~ 7 of this section, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
 - (c) A limited liability company;
 - (d) A limited partnership; ~~or~~
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or

- (4) A trade name registered in the manner provided in chapter 47-25.

⁶⁸ **SECTION 10. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-23. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and ~~that~~ all fees have been paid as provided in ~~chapter 40-23~~ under section 10-19.1-147, ~~then~~ the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends ~~its~~ the corporate 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~~ that is on file with the secretary of state, must change or amend ~~its~~ the corporation's name in each registration when ~~it~~ the corporation files an amendment.

SECTION 11. AMENDMENT. Subsection 2 of section 10-19.1-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, ~~either~~ hold an organizational meeting at the call of a majority of the incorporators or of the directors 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 corporation, including amending the articles;₁ electing directors;₁ adopting bylaws;₁ electing officers;₁ adopting banking resolutions;₁ authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials;₁ approving a corporate seal;₁ approving forms of certificates ~~or transaction statements~~ for shares of the corporation;₁ adopting a fiscal year for the corporation;₁ accepting subscriptions for and issuing shares of the corporation;₁ 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 incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner ~~that~~ a director may waive notice of meetings of the board ~~pursuant to~~ under subsection 5 of section 10-19.1-43.

⁶⁹ **SECTION 12. AMENDMENT.** Section 10-19.1-61 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-61. Authorized shares.

⁶⁸ Section 10-19.1-23 was also amended by section 11 of House Bill No. 1045, chapter 50.

⁶⁹ Section 10-19.1-61 was also amended by section 12 of Hosue Bill No. 1045, chapter 50.

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.
2. All ~~the~~ shares of a corporation:
 - a. Must be of one class and one series, unless the articles establish; or authorize the board to establish; more than one class or series;
 - b. Must be common shares entitled to vote and ~~shall~~ have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent ~~that~~ the articles have created nonvoting shares or have fixed the relative rights and preferences of different classes and series; and
 - c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.
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~~ as required under section 10-19.1-46 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 established in the articles or by resolution of the directors:
 - 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~~ any 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~~ the 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 with the secretary of state, together with the fees provided ~~in chapter 10-23~~ under section 10-19.1-147, 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~~ is 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.
5. Without limiting the authority granted ~~in~~ under this section, a corporation may issue shares of a class or series which:
 - a. ~~Subject~~ Are subject to the right of the corporation to redeem any of those shares at the price fixed for ~~the~~ the shares' redemption by the articles or by the board;

- b. ~~Entitling~~ Entitle the shareholders to cumulative, partially cumulative, or noncumulative distributions;
- c. ~~Having~~ Have preference over any class or series of shares for the payment of distributions of any or all kinds;
- d. ~~Convertible~~ Convert into shares of any other class or any series of the same or another class; or
- e. ~~Having~~ Have full, partial, or no voting rights, except as provided ~~in~~ under section 10-19.1-20.

SECTION 13. AMENDMENT. Subsection 5 of section 10-19.1-61.1 of the North Dakota Century Code is amended and reenacted as follows:

- 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~~ any right or ~~preferences~~ preference of ~~the holders~~ any holder of outstanding shares of any class or series and will not result in the percentage of authorized shares ~~that~~ of any class or series which remains unissued after the division or combination exceeding the percentage of authorized shares ~~that~~ of that class or series which were unissued before the division or combination.

SECTION 14. AMENDMENT. Subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

- 1. Subject to any restrictions in the articles:
 - a. The consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued ~~has been~~ is received by the corporation, the shares ~~must be~~ are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
 - b. ~~Upon authorization in accordance with section 10-19.1-61.1, the corporation may, without~~ Without any new or additional consideration, a corporation may issue its the corporation's own shares in exchange for or in conversion of ~~its~~ the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue its the corporation's own shares pro rata to ~~its~~ the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. ~~No shares~~ Shares of a class or series, shares of which are then outstanding, may not 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 15. AMENDMENT. Subsection 4 of section 10-19.1-64 of the North Dakota Century Code is amended and reenacted as follows:

4. The instrument or written agreement evidencing the right to purchase must set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

SECTION 16. A new subsection to section 10-19.1-65 of the North Dakota Century Code is created and enacted as follows:

A denial or limitation of preemptive rights otherwise provided under this section does not limit the power of the corporation to grant first refusal rights or other rights to purchase from the corporation shares or other securities of the corporation to shareholders, subscribers, or other persons before the shares or other securities are offered to or acquired by any other person.

SECTION 17. AMENDMENT. Section 10-19.1-66 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.

1. The shares of a corporation must be certificated shares or uncertificated shares. Each holder of certificated shares issued in compliance with section 10-19.1-63 is entitled to a certificate of shares.
- ~~2.~~ 2. The shares of a corporation must be represented by certificates signed by the president; or ~~by~~ a vice president, and by the secretary, or by an assistant secretary of the corporation.
- ~~2.~~ 3. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation; even if the person ~~has~~ ~~ceased to have~~ ceases having that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of ~~its~~ the certificate's issue.
- ~~3.~~ 4. Every certificate representing shares issued by a corporation ~~which~~ that is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each ~~such~~ of the series so far as to the extent the same relative rights and preferences have been fixed and determined and the authority of the board to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:
 - a. The name of the corporation.

- b. That the corporation is organized under the laws of this state.
 - c. The name of the person to whom issued.
 - d. The number and class of shares; and the designation of the series, if any, ~~which such~~ the certificate represents.
 - e. The par value of ~~such~~ any share represented by ~~such~~ the certificate; or a statement ~~that~~ the shares are without par value.
4. 5. A certificate signed as provided ~~in~~ under subsection 1 is prima facie evidence of the ownership of the shares referred to in the certificate.
5. 6. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of ~~its~~ the corporation's shares will be uncertificated shares.
- a. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
 - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates.
 - c. The information required under this section is not required to be sent to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
 - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

SECTION 18. AMENDMENT. Subsection 2 of section 10-19.1-68 of the North Dakota Century Code is amended and reenacted as follows:

- 2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate for a certificated or uncertificated fractional share does, but, and any scrip or warrants do not unless they provide otherwise, entitle warrants if expressly provided, entitles the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition ~~that they~~ the scrip or warrants become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

SECTION 19. AMENDMENT. Subsection 2 of section 10-19.1-70 of the North Dakota Century Code is amended and reenacted as follows:

2. A written restriction on the transfer or registration of transfer of securities of a corporation ~~that~~ which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

SECTION 20. AMENDMENT. Subsection 1 of section 10-19.1-73.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board may fix or authorize an officer to fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. ~~When~~ If a date is fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

SECTION 21. AMENDMENT. Subsection 1 of section 10-19.1-76.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy which is signed by the shareholder, with an officer authorized to tabulate votes.
 - a. ~~A written~~ Before the meeting, a shareholder may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent an 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, provided the corporation has no reason to believe the telegram, cablegram, or other electronic transmission was not authorized by the shareholder by means of telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholders. An electronic transmission must set forth or be submitted with information indicating the appointment is authorized by the shareholder. If it is determined a telegram, cablegram, or other electronic transmission is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

- b. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used; if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
- c. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of ~~them~~ the shareholders, 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 22. AMENDMENT. Subsection 3 of section 10-19.1-83 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The written agreement is enforceable by the persons described in subsection 1 who are parties to ~~it~~ the agreement and is binding upon and enforceable against only ~~those~~ the persons described in subsection 1 and other persons having with knowledge of the existence of the agreement. A signed original of the written agreement must be filed with the corporation. The existence and location of a copy of the written agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and ~~on each transaction statement~~ included in information sent to the holders of uncertificated shares according to subsection 6 of section 10-19.1-66. A shareholder, a beneficial owner of shares, or another person having with a security interest in shares ~~has the right~~ may obtain upon written demand ~~to obtain~~ a copy of the agreement from the corporation at the expense of the corporation.

SECTION 23. AMENDMENT. Subsection 1 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation shall keep at ~~its~~ the corporation's 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~~ name and ~~addresses~~ address of ~~the shareholders~~ each shareholder and the number and classes of shares held by each shareholder. A corporation shall also keep; at ~~its~~ the corporation's 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~~ certificated or uncertificated shares were issued.

SECTION 24. A new subsection to section 10-19.1-87 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenter's rights.

SECTION 25. AMENDMENT. Subsection 3 of section 10-19.1-88 of the North Dakota Century Code is amended and reenacted as follows:

3. If the proposed action must be approved by the shareholders, a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights ~~must~~ shall 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~~ may not vote the shares in favor of the proposed action.

SECTION 26. AMENDMENT. Section 10-19.1-91 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-91. Indemnification.

1. For purposes of this section:
 - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a director, the position of director in a corporation;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
 - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
 - d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
2. Subject to subsection 5, a corporation 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 excise taxes assessed against the person with respect to an

employee benefit plan, settlements, and reasonable expenses, including attorneys' 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 excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;
 - b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-19.1-51, 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 corporation, 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 corporation. 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 corporation 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~~ nolo contendere or ~~its~~ an equivalent plea does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to 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 corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation 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 corporation, if ~~it~~ the ultimate determination 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 shall be accepted without reference to financial ability to make the repayment.

5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses otherwise required ~~by~~ under 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 monetary limits on indemnification or advances for expenses, if the prohibitions or 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~~ act or ~~omissions~~ omission of the person occurring ~~prior to~~ before 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.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' 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 determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors 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, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors 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 or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the shareholders, other than the shareholders who are a party 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:
- (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) 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.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 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, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. A corporation 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 corporation would have been required to indemnify the person against the liability under the provisions of this section.
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 the indemnification or advance~~ was paid not later than the next meeting of shareholders.
11. ~~Nothing in this~~ This section may be construed to does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, officer, employee, or member of a committee of the board by contract or otherwise.

SECTION 27. 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~~ With or without a business purpose, a corporation 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. with:~~

- a. Another domestic corporation under a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
 - b. A limited liability company under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
 - c. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103.
2. ~~A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of an exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and sections 10-19.1-104 through 10-19.1-103.:~~
- a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
 - b. A corporation may acquire all the ownership interests of one or more classes or series of a limited liability company under a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.
 - c. A limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103 and chapter 10-32.
 - d. A foreign corporation or foreign limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in section 10-19.1-103.
3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of ~~its~~ the corporation's 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 28. 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~~ name of the ~~corporations~~ corporation and of 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 ~~corporation~~ organization; or
 - (2) In the case of an exchange, the name of the acquiring ~~corporation~~ organization;
- b. The terms and conditions of the proposed merger or exchange;
 - c. ~~With respect to the~~ The manner and basis of conversion for converting or exchange ~~exchanging~~ ownership interests:
 - (1) In the case of a merger, the manner and basis of converting the ~~shares~~ ownership interests of the constituent ~~corporations~~ organizations into securities of the surviving ~~corporation~~ organization or of any other ~~corporation~~ 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 ~~shares~~ ownership interests to be acquired for securities of the acquiring ~~corporation~~ organization or any other ~~corporation~~ organization 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 incorporation or articles of organization of the surviving ~~corporation~~ organization proposed as part of the merger; and
 - e. Any other provisions with respect to the proposed merger or exchange ~~that~~ which are deemed necessary or desirable.
2. ~~The procedure authorized by this~~ This section does not limit the power of a corporation to acquire all or part of the ~~shares~~ ownership interests of one or more classes or series of another ~~corporation~~ organization through a negotiated agreement with the ~~shareholders~~ owners or otherwise.

SECTION 29. 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 governing board as required by section 10-19.1-46 or 10-32-83~~ of each constituent corporation organization and must then be submitted at a regular or special meeting to the shareholders owners of:
 - a. ~~Each~~ each constituent ~~corporation~~ organization, in the case of a plan of merger; and
 - b. ~~The corporation or the constituent organization~~ whose shares ownership interests will be acquired by the acquiring corporation constituent organization in the exchange, in the case of a plan of exchange. If shareholders holding owners owning any class or series of stock of the corporation ownership interests in a constituent organization are entitled to vote on the plan of merger

or exchange ~~pursuant to~~ under this subsection, written notice must be given to every ~~shareholder~~ owner of that constituent organization, whether or not entitled to vote at the meeting, ~~no fewer~~ not less 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 in the case of a domestic corporation and in the manner provided in section 10-32-40 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 ~~shareholders~~ owners 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~~ ownership interests entitled to vote. 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 of incorporation, entitle the class or series of ~~shares~~ 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 ~~shares~~ ownership interests of the ~~corporation~~ constituent organization is not entitled to vote as a class or series solely because the plan of merger affects a cancellation of ~~shares~~ ownership interests of the class or series if the plan of merger or exchange affects a cancellation of all ~~shares~~ ownership interests of the ~~corporation~~ constituent organization of all classes and series that are outstanding immediately ~~prior to~~ before the merger or exchange and ~~shareholders~~ owners of ~~shares~~ ownership interests of that class or series are entitled to obtain payment for the fair value of their ~~shares~~ ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization is not required if:
 - a. The articles ~~of the corporation~~ will not be amended in the transaction;
 - b. Each ~~holder~~ owner of ~~shares~~ ownership interests in the ~~corporation~~ that constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ~~shares~~ ownership interests with identical rights immediately ~~thereafter~~ after the effective date;
 - c. The voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately after the merger or exchange, plus the voting power of the ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote issuable on conversion of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~

constituent organization entitled to vote immediately before the transaction; and

- d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately after the merger, plus the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization issuable on conversion of, or on the exercise of rights to purchase, securities issued in the merger, will not exceed by more than twenty percent the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately before the merger. "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership interests of the ~~corporation~~ that constituent organization which entitle their holders owners to participate without limitation in distributions by the ~~corporation~~ constituent organization.

5. If the merger or exchange is with a domestic limited liability company, the plan of merger or exchange must also be approved in the manner provided in chapter 10-32.

⁷⁰ **SECTION 30. AMENDMENT.** Section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-99. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared which contain:
 - a. The plan of merger; and
 - b. A statement that the plan ~~has been~~ is approved by each ~~corporation pursuant to~~ constituent organization under chapter 10-19.1 or chapter 10-32.
2. The articles of merger must be signed on behalf of each constituent ~~corporation~~ organization and filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.
3. The secretary of state shall issue a certificate of merger to the surviving ~~corporation~~ constituent organization or ~~its~~ the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.

⁷¹ **SECTION 31. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-100. Merger of subsidiary into parent.

⁷⁰ Section 10-19.1-99 was also amended by section 14 of House Bill No. 1045, chapter 50.

⁷¹ Section 10-19.1-100 was also amended by section 15 of House Bill No. 1045, chapter 50.

1. A parent owning at least ninety percent of the outstanding shares ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations; or limited liability companies may merge the subsidiary into ~~itself~~ the parent or into any other subsidiary at least ninety percent of the outstanding shares ownership interests of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the ~~shareholders~~ owners of ~~itself~~ the parent or any subsidiary; or may merge ~~itself~~ the parent, or ~~itself~~ the parent and one or more subsidiaries into one of the subsidiaries under this section.
2. A resolution approved by ~~the affirmative vote of a majority of the present~~ directors of the parent as required by section 10-19.1-46 or of the present governors of the parent required by section 10-32-83 must set forth a plan of merger that contains:
 - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving ~~corporation~~ constituent organization;
 - b. The manner and basis of converting the shares ownership interests of the subsidiary or subsidiaries or the parent into securities of the parent, subsidiary, or of another ~~corporation~~ organization; or, in whole or in part, into money or other property;
 - c. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ constituent organization in the merger, a provision for the pro rata issuance of shares ownership interests of the surviving ~~corporation~~ constituent organization to the ~~holders~~ owners of shares ownership interests of the parent on surrender of any ~~certificates for shares ownership interests~~ of the parent; and
 - d. If the surviving ~~corporation~~ constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving ~~corporation~~ constituent organization that will be part of the merger.
3. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ constituent organization in a merger, the resolution is not effective unless ~~it~~ the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all shares ownership interests 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, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which ~~it~~ the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
- 2- 4. A copy of the plan of merger must be mailed to each ~~shareholder~~ owner, other than the parent and any subsidiary, of each subsidiary that is a constituent ~~corporation~~ organization in the merger.
- 3- 5. Articles of merger must be prepared which contain:
 - a. The plan of merger;

- b. The number of outstanding ~~shares ownership interests~~ of each class and series of the subsidiary that is a constituent ~~corporation~~ organization in the merger and the number of ~~shares ownership interests~~ of each class and series owned by the parent directly, or indirectly through related ~~corporations~~ constituent organizations;
 - c. The date a copy of the plan of merger was mailed to ~~shareholders~~ owners, other than the parent or a subsidiary, of each subsidiary that is a constituent ~~corporation~~ organization in the merger; and
 - d. A statement that the plan of merger ~~has been~~ is approved by the parent under this section.
4. ~~6.~~ 6. Within thirty days after a copy of the plan of merger is mailed to ~~shareholders~~ owners of each subsidiary that is a constituent ~~corporation~~ organization to the merger; or upon waiver of the mailing by the ~~holders~~ owners of all outstanding ~~shares ownership interests~~ of each subsidiary that is a constituent ~~corporation~~ organization 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~~ section 10-19.1-147.
5. ~~7.~~ 7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving constituent organization or ~~its~~ the surviving constituent organization's 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. ~~8.~~ 8. If all of the ~~shares ownership interests~~ of one or more domestic subsidiaries that is a constituent ~~party~~ organization to a merger under this section are not owned by the parent directly, or indirectly through related ~~corporations~~ constituent organizations, immediately ~~prior to~~ before the merger, the ~~shareholders~~ owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 ~~and section 10-19.1-88~~ or subsection 2 of section 10-32-54. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the merger, ~~and~~ the articles of incorporation or articles of organization of the surviving ~~corporation~~ organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately ~~prior to~~ before the merger in a manner that would entitle a ~~shareholder~~ owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, ~~if~~ and the articles of incorporation or articles of organization of the surviving ~~corporation~~ constituent organization constitute an amendment to the articles of ~~the corporation~~ incorporation or articles of organization of the parent, that ~~shareholder~~ owner of the parent has dissenter's rights as provided under sections 10-19.1-87 ~~and 10-19.1-88~~ or 10-32-54. Except as provided in this subsection, sections 10-19.1-87 ~~and 10-19.1-88~~ 10-32-54 do not apply to any merger affected under this section.
7. ~~9.~~ 9. 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.

⁷² **SECTION 32. AMENDMENT.** Section 10-19.1-101 of 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~~ is approved by the ~~shareholders~~ owners 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, ~~if the plan~~ may be abandoned:
 - a. With respect to the approval of the abandonment:
 - (1) If the ~~shareholders~~ owners of the ownership interests of each of the constituent ~~corporations~~ organizations 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~~ owners of a majority of the voting power of the ~~shares~~ ownership interests entitled to vote ~~and, if~~;
 - (2) If the ~~shareholders~~ owners of a constituent ~~corporation~~ organization are not entitled to vote on the approval of the plan under section 10-19.1-98, the governing board of directors of the constituent ~~corporation~~ organization has approved the abandonment by the affirmative vote ~~of a majority of the directors present~~ required by section 10-19.1-46 or by section 10-32-83; and
 - (3) If the merger or exchange is with a foreign corporation or limited liability company, if abandonment is approved in the manner as may be required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized.
 - 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~~ are 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 before the effective date of the plan, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present the governing board required by section 10-19.1-46 or 10-32-83, subject to the contract rights of any other person under the plan.

⁷² Section 10-19.1-101 was also amended by section 16 of House Bill No. 1045, chapter 50.

3. If articles of merger ~~have been~~ are filed with the secretary of state, ~~the board~~ but are not yet effective, the constituent organizations, in the case of abandonment under paragraph 1 of subdivision a of subsection 1, the constituent organization or any one of them under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state, ~~together~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, articles of abandonment that contain:
 - a. The ~~name~~ names of the constituent ~~corporations~~ organizations;
 - 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.
4. If the certificate of merger ~~has been~~ is issued, the board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

SECTION 33. AMENDMENT. Section 10-19.1-102 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-102. Effective date of merger or exchange - 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 ~~corporations~~ organizations become a single ~~corporation~~ entity, the surviving corporation or the surviving limited liability company, as the case may be.
 - b. The separate existence of all constituent ~~corporations~~ organizations except the surviving ~~corporation~~ organization ceases.
 - c. As to any corporation that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as articles of termination, and unless previously filed, the notice of dissolution.
 - d. As to rights, privileges, 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 of the duties and liabilities of a domestic limited liability company.
 - (2) The If the surviving ~~corporation~~ organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter.

- d. e. The surviving ~~corporation~~ organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent ~~corporations~~ organizations.
- (1) All property; ~~real, personal, and mixed~~, and all debts due on any account, including subscriptions to shares; and all other choses in action, and every other interest of or belonging to or due to each of the constituent ~~corporations~~ organizations vests in the surviving ~~corporation~~ organization without any further act or deed.
 - (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent ~~corporation~~ organization by ~~its~~ the organization's current officers or managers, as the case may be, or, if the ~~corporation~~ organization no longer exists, by ~~its~~ the organization's last officers or managers.
 - (3) The title to any real estate or any interest ~~therein~~ vested in any of the constituent ~~corporations~~ organizations does not revert nor in any way become impaired by reason of the merger.
- e. f. The surviving ~~corporation~~ organization is responsible and liable for all the liabilities and obligations of each of the constituent ~~corporations~~ organizations.
- (1) A claim of or against or a pending proceeding by or against a constituent ~~corporation~~ organization may be prosecuted as if the merger ~~had~~ did not taken ~~take~~ place, or the surviving ~~corporation~~ organization may be substituted in the place of the constituent ~~corporation~~ organization.
 - (2) Neither the rights of creditors nor any liens upon the property of a constituent ~~corporation~~ organization are impaired by the merger.
- f. g. The articles of incorporation or articles of organization, as the case may be, of the surviving ~~corporation~~ organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.
3. When a merger or exchange becomes effective, the ~~shares of the corporation or corporations~~ ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The ~~holders~~ owners of those ~~shares~~ ownership interests are entitled only to the securities, money, or other property into which those ~~shares~~ ownership interests have been converted or for which those ~~shares~~ ownership interests have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87 or 10-32-54.

⁷³ **SECTION 34. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-103. Merger or exchange with foreign corporation or foreign limited liability company.

1. A domestic corporation may merge with or participate in an exchange with a foreign corporation or 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 jurisdiction under which the foreign corporation or foreign limited liability company is incorporated; ~~and~~ or organized.
 - b. With respect to an exchange, the ~~corporation whose shares~~ constituent organization whose ownership interests will be acquired is a domestic corporation or limited liability company, regardless of whether ~~or not~~ the exchange is permitted by the laws of the state jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of ~~shares of corporations~~ ownership interests and each foreign corporation or foreign limited liability company shall comply with the applicable provisions of the laws of the jurisdiction under which it was incorporated or organized or by which it is governed.
3. If the surviving ~~corporation~~ organization in a merger will be a domestic corporation, ~~it~~ the organization shall comply with this chapter.
4. If the surviving ~~corporation~~ organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, ~~it~~ the organization shall comply with the provisions of this chapter 10-22 with respect to foreign corporations or chapter 10-32 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 ~~corporation~~ organization and in a proceeding for the enforcement of the rights of a dissenting ~~shareholder~~ owner of an ownership interest of a constituent ~~corporation~~ organization against the surviving foreign corporation or foreign limited liability company;
 - b. An irrevocable appointment of the secretary of state as ~~its~~ the organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

⁷³ Section 10-19.1-103 was also amended by section 17 of House Bill No. 1045, chapter 50.

- c. An agreement that ~~it~~ the organization will promptly pay to the dissenting ~~shareholders~~ owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company the amount, if any, to which they are entitled under section ~~10-19.1-87~~ 10-19.1-88 or 10-32-55.

⁷⁴ **SECTION 35. AMENDMENT.** Subsection 2 of section 10-19.1-106 of the North Dakota Century Code is amended and reenacted as follows:

2. The articles of dissolution must be filed with the secretary of state, together with the fees provided for in chapter 10-23 section 10-19.1-147.

⁷⁵ **SECTION 36. AMENDMENT.** Subsection 1 of section 10-19.1-108 of the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file with the secretary of state, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, a notice of intent to dissolve. The notice must contain:
 - a. The name of the corporation;
 - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and
 - c. A statement that the requisite vote of the shareholders was received or that all shareholders entitled to vote signed a written action.

⁷⁶ **SECTION 37. AMENDMENT.** Subsection 3 of section 10-19.1-112 of the North Dakota Century Code is amended and reenacted as follows:

3. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The corporation may ~~thereafter~~ resume business after this revocation.

⁷⁷ **SECTION 38. AMENDMENT.** Subsection 1 of section 10-19.1-113.1 of the North Dakota Century Code is amended and reenacted as follows:

1. An original of the articles of dissolution must be filed with the secretary of state. If the secretary of state ~~finds that~~ determines the articles of dissolution conform to law and ~~that~~ all fees have been paid under

⁷⁴ Section 10-19.1-106 was also amended by section 18 of House Bill No. 1045, chapter 50.

⁷⁵ Section 10-19.1-108 was also amended by section 19 of House Bill No. 1045, chapter 50.

⁷⁶ Section 10-19.1-112 was also amended by section 21 of House Bill No. 1045, chapter 50.

⁷⁷ Section 10-19.1-113.1 was also amended by section 22 of House Bill No. 1045, chapter 50.

~~chapter 10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of dissolution.

⁷⁸ **SECTION 39. AMENDMENT.** Section 10-19.1-129 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-129. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship 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 corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer 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 corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at ~~its~~ the 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. 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 ~~10-23-02-2~~ 10-19.1-146, service may be made according to subsection 2.
5. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the

⁷⁸ Section 10-19.1-129 was also amended by section 23 of House Bill No. 1045, chapter 50.

action taken with reference to it must be maintained in the office of the secretary of state.

6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

SECTION 40. AMENDMENT. Section 10-19.1-137 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-137. Foreign corporation - Amendments to the certificate of authority.

If any statement in the application for a certificate of authority by a foreign corporation ~~was is~~ false when made or ~~any arrangements or other facts described have changed, making the application inaccurate in any respect the foreign corporation changes the foreign corporation's name or purposes sought in this state,~~ the foreign corporation ~~shall~~ promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

1. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.
2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority.

SECTION 41. AMENDMENT. Section 10-19.1-139 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to transact business in this state. ~~Whenever~~ If a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which ~~it~~ the foreign corporation is incorporated, and the foreign corporation 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. Any foreign organization ~~which~~ that is the surviving organization in a merger and which will continue to transact business in this state; shall procure a ~~new~~ certificate of authority if not previously authorized to transact business in the state.

SECTION 42. AMENDMENT. Subsection 1 of section 10-19.1-146 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Each corporation and each foreign corporation 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 corporation or foreign corporation and the state or country under the laws of which ~~it~~ the corporation or foreign corporation is incorporated.
 - b. The address of the registered office of the corporation or foreign corporation in this state, the name of ~~its~~ the corporation's or foreign corporation's registered agent in this state at that address, and the address of ~~its~~ the corporation's or foreign corporation's principal executive office.
 - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
 - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
 - e. A statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - f. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - g. ~~A statement, expressed in dollars, of the amount of shareholders' equity in the corporation or foreign corporation. Shareholders' equity is the net difference between total assets and total liabilities and may include the sum of the following:~~
 - ~~(1) Consideration received for issued shares;~~
 - ~~(2) Additional paid-in capital;~~
 - ~~(3) Capital surplus;~~
 - ~~(4) Undivided profits;~~
 - ~~(5) Retained earnings or retained deficit;~~
 - ~~(6) Unrealized holding gains or losses;~~
 - ~~(7) Consideration paid for treasury shares; and~~
 - ~~(8) Any other amounts the corporation has transferred to shareholders' equity.~~

- h. Irrespective of the manner of its designation by the laws under which a foreign corporation is incorporated, the shareholders' equity of a foreign corporation must be determined on the same basis and in the same manner as the shareholders' equity of a domestic corporation, for the purpose of computing fees and other charges imposed by this chapter.
- i. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross income of the corporation for the twelve months ending on December thirty-first preceding the date ~~herein~~ provided under this section for the filing of the annual report and the gross amount ~~thereof~~ accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time ~~herein~~ provided under this section for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, ~~then~~ the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of ~~its~~ the corporation's authorization to transact business in this state and December thirty-first.
- j. h. Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.

SECTION 43. AMENDMENT. Section 10-19.1-147 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-147. Fees for filing documents - Issuing certificates - License fees. 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, fifty dollars.
5. Filing articles of abandonment of merger, fifty dollars.
6. Filing an application to reserve a corporate name, ten dollars.
7. Filing a notice of transfer of a reserved corporate name, ten dollars.
8. Filing a cancellation of reserved corporate name, ten dollars.
9. Filing a consent to use of name, ten dollars.

10. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
11. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
12. Filing a registered agent's consent to serve in such capacity, ten dollars.
13. Filing a resignation as registered agent, ten dollars.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement of reduction of stated capital, twenty dollars.
17. Filing a statement of intent to dissolve, ten dollars.
18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
19. Filing articles of dissolution, twenty dollars.
20. 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.
21. 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.
22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - a. Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
 - b. Thereafter, sixty dollars; and
 - c. After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
25. Filing any process, notice, or demand for service, twenty-five dollars.

26. Furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal thereto.
27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction thereof, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.
 - a. A license fee is payable by a corporation at the time of:
 - (1) Filing articles of incorporation;
 - (2) Filing articles of amendment increasing the number or value of authorized shares; or
 - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.
 - b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
 - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
 - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.
 - e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares. Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued. Any additional amount must be paid in increments of ten thousand dollars of ~~its~~ authorized shares.
 - f. The provisions of this subsection do not apply to a building and loan or savings and loan association.
28. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:
 - a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay 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 annual report.

- b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from ~~its~~ that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of ~~its~~ that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from ~~its~~ that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
- c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at ~~its~~ the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

29. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
30. Filing any other statement of a corporation or foreign corporation, ten dollars.

⁷⁹ **SECTION 44. AMENDMENT.** Section 10-30-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30-05. Business Corporation Act to apply. The provisions of ~~chapters chapter~~ chapter 10-19.1; ~~40-22; and 40-23~~ apply to state development corporations as ~~they may be~~ applicable and not inconsistent with this chapter.

⁸⁰ **SECTION 45. AMENDMENT.** Section 10-30.1-04 of 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, a venture capital corporations organization may be formed under ~~chapters chapter~~ chapter 10-19.1 ~~through 40-23~~ if a corporation, or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a

⁷⁹ Section 10-30-05 was also amended by section 24 of House Bill No. 1045, chapter 50.

⁸⁰ Section 10-30.1-04 was also amended by section 25 of House Bill No. 1045, chapter 50.

- venture capital ~~corporation~~ organization must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation or limited liability company 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 or each governor of a venture capital limited liability company must be a North Dakota resident, and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.
 4. A venture capital corporation ~~will~~ or limited liability company shall 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 or limited liability company 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 or limited liability company 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~~ Business may not be transacted or indebtedness incurred by the venture capital corporation or limited liability company, except such as is incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or limited liability company's shares or membership interests, until the venture capital corporation or limited liability company receives consideration for such shares or membership interests equal to at least five hundred thousand dollars, which amount ~~will be~~ is the initial stated capital of the venture capital corporation or limited liability company.
 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 or limited liability company's organization or to obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or limited liability company's 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~~ or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation ~~or bylaws of~~, the articles of organization ~~and operating agreement of the venture capital corporation~~, or bylaws, the funds held in escrow pursuant to

subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to ~~its~~ the venture capital corporation's or limited liability company's articles of incorporation ~~and bylaws or the~~, articles of organization and operating agreement, or the bylaws.

8. If within one year of the issuance of the certificate of incorporation ~~or certificate of organization~~ of the venture capital corporation ~~its~~ or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's 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, or the bylaws, its the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization ~~will be terminated~~, the venture capital corporation must be dissolved or terminated, 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~~ the investor's investments.
9. ~~Prior to~~ Before any investment in a venture capital corporation or limited liability company, the venture capital corporation ~~must~~ or limited liability company shall make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.
10. If a venture capital corporation or limited liability company 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 or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to ~~their~~ the investor's investments.

SECTION 46. AMENDMENT. Subsection 1 of section 10-31-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Two~~ One or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. The articles of organization must meet the requirements of chapter 10-32; and must contain the following:
 - a. The profession to be practiced through the professional limited liability company; and
 - b. The ~~names~~ name and residence ~~addresses~~ address of ~~all of the each~~ original ~~members~~ member of the professional limited liability company who will practice the profession in this state.

SECTION 47. AMENDMENT. Subsection 2 of section 10-31-11 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to a professional organization 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 the member, or the same may be provided for in the ~~operating agreement bylaws~~, in the member-control agreement, or by private agreement. In the absence of a provision for the same in the articles of organization, in the ~~operating agreement bylaws~~, in the member-control agreement, or by private agreement, the limited liability company has an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in the limited liability company within six months after the death or disqualification of the member.
- b. The option price for such membership interest must 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, in the ~~operating agreement bylaws~~, in the member-control agreement, or by private agreement. Book value must be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by the limited liability company.
- c. If the limited liability company fails to exercise the option, the membership interest of the deceased or disqualified member may be sold to any individual 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 a membership interest in the limited liability company during the option period and for a reasonable period thereafter, pending transfer to another licensed or otherwise legally authorized individual, but may not participate in any decisions concerning the performance of professional service.

SECTION 48. AMENDMENT. Section 10-31-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Professional organizations - Annual reports - Renewal.

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence ~~addresses~~ address of ~~all officers~~ each officer, ~~directors~~ director, and ~~shareholders~~ shareholder of the corporation ~~as of~~ at the ~~thirtieth day of June next preceding the time of~~ thirtieth day of June next preceding the time of filing of the report. With respect to shares, the report ~~shall~~ must include:
 - (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and

- (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. The report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the corporation; and
 - (3) Accompanied by the filing fee prescribed in chapter 10-19.1.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders described in the report. No filing fee may be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization 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 the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization as of the thirtieth day of June next preceding the filing of the report.
 - b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the report. No filing fee may be charged by the regulatory board.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The ~~renewal registration annual report~~ filed with the secretary of state ~~pursuant to~~ at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of ~~all partners~~ each partner of the organization ~~as of the thirtieth day of June next preceding the~~ at the time of filing of the ~~renewal registration annual report~~.
 - b. The ~~renewal registration annual report~~ must include a statement that ~~all partners~~ each partner holding voting partnership interests who ~~practice~~ practices in this state ~~are~~ is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The ~~renewal registration~~ shall annual report must be:
 - (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) Signed by a managing partner of the limited liability partnership; and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
 - c. A copy of the ~~renewal registration annual report~~ must be filed at the same time with the regulatory board that licenses the partners described in the ~~renewal registration annual report~~. ~~No~~ A filing fee may not be charged by the regulatory board.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not ~~to exceed~~ exceeding twenty dollars per individual certified to be licensed by the regulating board.

SECTION 49. AMENDMENT. Section 10-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended otherwise requires:

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:

- a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
3. ~~"Agreement to give dissolution avoidance 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 that if, in the future, the continued membership of any member is terminated through an event covered in the agreement, then each remaining member shall give dissolution avoidance consent.~~
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. 4. "Board" or "board of governors" means the board of governors of a limited liability company.
6. 5. "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 before or 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.~~
6. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:
- a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and

- b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board of governors or the members.
- ~~8.~~ 7. "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.~~ 8. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
- ~~10.~~ 9. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.
- ~~11.~~ 10. "Contribution agreement" means an agreement between a person and a limited liability company under which:
- The person agrees to make a contribution in the future; and
 - 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.~~ 11. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
- The person has the right, but not the obligation, to make a contribution in the future; and
 - 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.~~ 12. "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~~ the limited liability company's affairs and to terminate ~~its~~ the limited liability company's existence as a legal entity.
- ~~14.~~ 13. "Dissolution avoidance consent" means the consent of all remaining members:
- 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
 - That the limited liability company must be continued as a legal entity without dissolution.
- ~~15.~~ 14. "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 ~~the~~ the limited liability company's 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.

46. 15. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.
47. 16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. That either of the following has been delivered to the secretary of state and has been determined by the secretary of state to conform to law:
 - (1) A signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or
 - (2) A signed original of all other documents, meeting the applicable requirements of this chapter, together with the fees provided in section ~~10-33-141~~ 10-32-150.
 - b. That the secretary of state shall then:
 - (1) Endorse on the original the word "filed" and the month, day, and year; and
 - (2) Record the document in the office of the secretary of state.
48. 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.
49. 18. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.
20. 19. "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 for which a limited liability company may be organized under this chapter.
24. 20. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

- ~~22.~~ 21. "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.
- ~~23.~~ 22. "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.
- ~~24.~~ 23. "Governor" means an individual serving on the board of governors.
- ~~25.~~ 24. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:
- a. If the person intentionally does the act or causes the result prohibited by the statute; or
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- ~~26.~~ 25. "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.
- ~~27.~~ 26. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
- ~~28.~~ 27. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.
- ~~29.~~ 28. "Manager" means:
- a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board of governors; and
 - b. An individual considered elected as a manager pursuant to section 10-32-92.
- ~~30.~~ 29. "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~~ in the limited liability company.
- ~~31.~~ 30. "Membership interest" means a member's interest in a limited liability company consisting of:
- a. A member's ~~interest in a limited liability company consisting of a member's~~ financial rights;

- b. A member's right to assign financial rights as provided in section 10-32-31;
 - c. A member's governance rights, if any; and
 - d. A member's right to assign any governance rights owned as provided in section 10-32-32.
32. 31. "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~~ 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.
33. ~~"Operating agreement" means rules, resolutions, or other provisions, regardless how designated, 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.~~
34. 32. "Organization" means, whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
35. 33. "Owners" means:
- a. Members in the case of a limited liability company; and

b. Shareholders in the case of a corporation.

~~36.~~ 34. "Ownership interests" means:

- a. Membership interests in the case of a limited liability company; and
- b. Shares in the case of a corporation.

~~37.~~ 35. "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~38.~~ 36. "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.

~~39.~~ 37. "Principal executive office" means:

- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
- b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.

~~40.~~ 38. "Registered office" means the place in this state designated in the articles as the registered office of the limited liability company.

~~44.~~ 39. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
- c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~42.~~ 40. "Required records" are those records required to be maintained under section 10-32-51.

43. 41. "Security" has the meaning given it in subsection 13 of section 10-04-02.
44. 42. "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.
45. 43. "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:
- a. 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, a member-control agreement, or operating agreement the bylaws or a resolution approved by the affirmative vote of the required proportion or number of governors as required by section 10-32-83 or the members as required proportion of the voting power of membership interests present and entitled to vote by section 10-32-42; and
 - b. Not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.
46. 44. "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 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 by the specified limited liability company.
47. 45. "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.
48. 46. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
49. 47. "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.

- ~~50:~~ 48. "Vote" includes authorization by written action.
- ~~54:~~ 49. "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~~ disposing of its assets under section 10-32-131.
- ~~52:~~ 50. "Written action" means a written document signed by ~~all of the persons~~ every person required to take the action described: ~~The term also means and~~ the counterparts of a written document signed by any ~~of the persons~~ person 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.

SECTION 50. AMENDMENT. Section 10-32-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-06. ~~Two-member requirement~~ Number of members required. ~~Unless otherwise provided in the articles of organization, a~~ A limited liability company must have ~~two~~ one or more members at the time of its formation. ~~Unless a one-member limited liability company is authorized in the articles of organization, a limited liability company must be dissolved under subdivision e of subsection 4 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.~~

⁸¹ **SECTION 51. AMENDMENT.** Section 10-32-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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;~~
 - e. The address of the registered office of the limited liability company and the name of ~~its~~ the limited liability company's registered agent at that address;
 - ~~d.~~ c. The name and address of each organizer;
 - e. d. The effective date of organization:
 - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
 - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and

⁸¹ Section 10-32-07 was also amended by section 27 of House Bill No. 1045, chapter 50.

- f. e. A If the articles of organization are filed with the secretary of state:
- (1) Before July 1, 1999, a statement stating in years that the ~~limited~~ period of existence for the limited liability company must be a period of thirty years ~~or less~~ from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration; which may be perpetual.
 - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.
- g. ~~A statement as to whether upon the occurrence of any event under subdivision e of subsection 4 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;~~
- h. ~~A statement as to whether the members have the power to enter into a business continuation agreement; and~~
- i. ~~A statement as to whether fewer than two members shall be permitted.~~
2. The following provisions govern a limited liability company unless modified in the articles of organization or a ~~member central~~ member-control agreement under section 10-32-50:
- a. A limited liability company has general business purposes as provided in section 10-32-04;
 - b. A limited liability company has certain powers as provided in section 10-32-23;
 - c. The power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is vested in the board of governors as provided in section 10-32-68;
 - d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
 - e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board of governors as provided in section 10-32-83;
 - f. A written action by the board of governors taken without a meeting must be signed by all governors as provided in section 10-32-84;
 - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in 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 as provided in 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 as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The ~~restatement of value of previous contributions is to~~ must be determined according to a specified process restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board of governors as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, ~~except where~~ if this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section ~~10-32-43~~ 10-32-42;
- 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 as provided in section ~~10-32-45~~ 10-32-40.1;
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in 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 as provided in section 10-32-36;
- p. A written action by the members taken without a meeting must be signed by all members as provided in 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 as provided in section 10-32-62;
- r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
- s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
- t. Unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109; ~~and~~

- u. ~~A limited liability company dissolves upon an occurrence of an event that terminates the continued membership of any member as provided in subsection 4 of section 10-32-109. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and~~
 - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
3. The following provisions govern a limited liability company unless modified either in the articles of organization, a ~~member central member-control~~ agreement under section 10-32-50, or in the ~~operating agreement~~ bylaws:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
 - b. The compensation of governors is fixed by the board of governors as provided in section 10-32-74;
 - c. A certain method must be used for removal of governors as provided in section 10-32-78;
 - d. A certain method must be used for filling board of governor vacancies as provided in 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 as provided in subsection 1 of section 10-32-80;
 - f. The notice of a board of governors meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
 - g. A majority of the board of governors is a quorum for a board meeting as provided in 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 as provided in subsection 2 of section 10-32-85;
 - i. The board may establish a special litigation committee as provided in section 10-32-85;
 - j. The president and treasurer have specified duties, until the board of governors determines otherwise as provided in 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 as provided in section 10-32-95;
 - l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in 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 as provided in 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 as provided in 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 as provided in ~~subsection 4 of section 10-32-45~~ 10-32-40.1;
 - p. Indemnification of certain persons is required as provided in 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 as provided in subsection 1 of section 10-32-64; and
 - r. Members have no right to interim distributions except as provided through the ~~operating agreement~~ bylaws or an act of the board of governors as provided in section 10-32-61.
4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company in subdivisions b to f, h, i, j, k, l, m, n, and q may be included either in the articles of organization, in a member central member-control agreement under section 10-32-50, 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 bylaws:
- a. The persons to serve as the first board of governors may be named in the articles of organization as provided in subsection 1 of section 10-32-69;
 - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
 - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
 - d. Governors may be classified as provided in section 10-32-75;
 - e. The date, time, and place of board of governors meetings may be fixed as provided in subsection 1 of section 10-32-80;

- f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
 - g. A larger than majority vote may be required for board of governor action as provided in 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 as provided in section 10-32-89;
 - i. Additional managers may be designated as provided in section 10-32-88;
 - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
 - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
 - l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
 - m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
 - n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
 - o. A larger than majority vote may be required for member action as provided in section 10-32-42;
 - p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section ~~10-32-45~~ 10-32-40.1;
 - q. Limited liability company actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and
 - r. A governor's personal liability to the limited liability company or ~~its~~ the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.
5. Subsection 4 does not limit the right of the board, by resolution, to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
6. 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.~~ 7. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

SECTION 52. AMENDMENT. Subsection 1 of section 10-32-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The limited liability company name:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state;
 - c. May not contain a word or phrase that indicates or implies that it may not be organized under this chapter;
 - d. May not contain the word "corporation" or "incorporated" ~~and may not contain the~~, "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of either or both of these words;
 - e. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose for which a limited liability company may be organized under this chapter; and
 - f. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles a document which complies with subsection ~~2~~ 3 of this section, of:
 - (a) Another limited liability company;
 - (b) A corporation;
 - (c) A limited partnership; ~~or~~
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.

SECTION 53. AMENDMENT. Subsection 5 of section 10-32-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The secretary of state may accept for filing a legible facsimile ~~copy~~ telecommunication of the signed original of any request for reserved name.

SECTION 54. A new subsection to section 10-32-13 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The fee prescribed in section 10-32-150 for change of address of registered office must be refunded when the secretary of state determines a change of address of registered office results from rezoning or postal reassignment.

SECTION 55. AMENDMENT. Section 10-32-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 to the articles of organization, 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 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.

SECTION 56. AMENDMENT. Section 10-32-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 of 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 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~~ bylaws 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~~ signed 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.

SECTION 57. AMENDMENT. Section 10-32-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-23. General 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 with articles of organization filed with the secretary of state:
 - a. Before July 1, 1999, 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 or longer duration, which may be perpetual.
 - b. After June 30, 1999, has perpetual 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, encumber, assign, 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, 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.
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 or other encumbrance or assignment of 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. 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 and establish employee or incentive benefit plans, trusts, and provisions for the benefit of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for 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.
14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of its members, 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~~ the bylaws 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 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 acquire an ownership interest in another organization.
25. 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.

SECTION 58. AMENDMENT. Section 10-32-28 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.
 - a. The statement must describe the member's right to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31, or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest.
 - b. ~~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. ~~Notwithstanding any other provision of law, for~~ For the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 41-09-06, and not a certificated security as defined in section 41-08-02, an uncertificated security as defined in section 41-08-02, chattel paper as defined in section 41-09-05, an instrument as defined in section 41-09-05, or an account as defined in section 41-09-06 to be characterized as provided in subsection 3 of section 41-08-03.

SECTION 59. AMENDMENT. Section 10-32-30 of the North Dakota Century Code is amended and reenacted as follows:

10-32-30. Termination of a membership interest.

1. The continued membership of a member in a limited liability company is terminated by:
 - a. The member's death;
 - b. The member's retirement;
 - c. The member's resignation;
 - d. The redemption of the member's complete membership interest;
 - e. An assignment of the member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
 - f. A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;
 - g. The member's expulsion;
 - h. The member's bankruptcy;
 - i. The dissolution of a member that is an organization; or
 - j. The occurrence of any other event terminating the continued membership of a member in the limited liability company.
2. A member always has the power, though not necessarily the right, to terminate its the member's 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 4 of section 10-32-109 unless dissolution is avoided under that subdivision. 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. 3. Unless otherwise provided in the articles of organization or in a member-control agreement, a member may not be expelled.
3. 4. If for any reason the continued membership of a member is terminated and:

- a. ~~If dissolution under subdivision e of subsection 4 of section 10-32-109 is avoided under that subdivision the termination does not result in the dissolution of the limited liability company, then~~ subject to the articles of organization and any member-control agreement, 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 4 of section 10-32-109 is not avoided under that subdivision the termination does result in the dissolution of the limited liability company,~~ subject to the articles of organization and any member-control agreement, the member whose continued membership has terminated retains all governance rights and financial 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. 5. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, ~~then:~~
- a. ~~If dissolution avoidance consent is obtained,~~ the member who has wrongfully resigned or retired is liable to the limited liability company to the extent damaged by the wrongful resignation or retirement; ~~and~~
 - b. ~~If dissolution avoidance consent is not obtained, section 10-32-131 applies.~~

SECTION 60. AMENDMENT. Section 10-32-31 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.
 - a. 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.
 - b. 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 a member-control agreement, in the ~~operating agreement~~ bylaws, 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. Subject to subsection 5, 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.
5. With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.
6. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

SECTION 61. AMENDMENT. Section 10-32-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-32. Assignment of governance rights.

1. 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.
 - a. Except as otherwise provided in the articles of organization or a member-control agreement, 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.
 - b. ~~Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection.~~
 - (1) ~~However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subsection.~~

- ~~(2) If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.~~
3. When an assignment of governance rights is effective under subsection 2:
 - a. If the assignment is not a security interest, 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 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 4 of section 10-32-109 on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subsection 2.~~
 4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:
 - a. The assignee is liable in proportion to the interest assigned for the 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.
 7. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection. However, a secured party may not take or assign ownership of governance rights without first obtaining the

consent required by this subsection. If a secured party has a security interest in a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

8. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

SECTION 62. AMENDMENT. Subsection 2 of section 10-32-35 of the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the termination does not result in dissolution is avoided under subdivision e of subsection 4 of section 10-32-109, then subject to the articles of organization and any member-control agreement:
 - 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.

SECTION 63. AMENDMENT. Section 10-32-36 of the North Dakota Century Code is amended and reenacted as follows:

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization, in a member-control agreement, 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~~ must 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.

SECTION 64. AMENDMENT. Section 10-32-37 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, in a member-control agreement, 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. Unless otherwise provided in the articles of organization or a member-control agreement, no preemptive rights pursuant to this section 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. If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization ~~that~~ or a member-control agreement which 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. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

SECTION 65. AMENDMENT. Section 10-32-38 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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,~~ a member-control agreement, the bylaws, or by subsection 2.
2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
 - a. 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.
- b. 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.
 - c. 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.
 - d. 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 date and at the time and place fixed by, or in a manner authorized by, the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, 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:
 - a. 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.
 - b. No other particular business is required to be transacted at a regular meeting.
 - c. Any business appropriate for action by the members may be transacted at a regular meeting.

SECTION 66. AMENDMENT. Section 10-32-39 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or ~~operating agreement~~ the bylaws 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.

- a. 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.
 - b. 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.
 - c. 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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.

SECTION 67. AMENDMENT. Subsection 3 of section 10-32-40 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The notice:
 - a. In all instances where a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, and not more than fifty days before the date of the meeting;
 - b. ~~The notice must~~ Must contain the date, time, and place of the meeting;
 - c. Must contain the information with respect to ~~dissenter's~~ dissenters' rights required by subsection 2 of section 10-32-55, if applicable;
 - d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;

- f. Must contain any other information:
 - (1) Required by the articles of organization, ~~operating agreement~~ any member-control agreement, the bylaws, or this chapter;
 - (2) Considered necessary or desirable by the board of governors; and
- g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

SECTION 68. AMENDMENT. Section 10-32-40.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-40.1. Voting rights.

1. The board of governors may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board of governors fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
 - a. It must provide the original record date for notice and voting continues in effect; or
 - b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.
5. Unless otherwise provided in the articles, in a member-control agreement, 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.
6. The articles of organization or a member-control agreement may give or prescribe the manner of giving a creditor, securityholder, 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.~~

7. 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.
8. Except as provided in subsection 7, 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.

SECTION 69. AMENDMENT. Section 10-32-42 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-42. Act of members. Unless this chapter or the articles of organization require a greater vote or voting by class or series:

1. The members shall take action by the affirmative vote of the owners of the greater of a majority of the voting power of the membership interests present and entitled to vote on that item of business or a majority of the voting power of the membership interests with voting rights that would constitute the minimum voting power needed for a quorum for the transaction of business at a meeting, except if this chapter, the articles of organization, or a member-control agreement require a larger proportion. If the articles or a member-control agreement require a larger proportion than is required by this chapter for a particular action, the articles or member-control agreement control.
2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, ~~the operating~~ a member-control 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, unless the articles of organization or a member-control agreement requires a larger proportion.
3. Unless otherwise provided in the ~~article~~ articles of organization, a member-control agreement, or operating agreement the bylaws, members may take action at a meeting by voice or ballot, action without a meeting pursuant to section 10-32-43, written ballot pursuant to section 10-32-43.1, or by electronic communication pursuant to section 10-32-43.2.

SECTION 70. AMENDMENT. Subsection 1 of section 10-32-43 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement so ~~provide~~ provides, 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.

SECTION 71. AMENDMENT. Section 10-32-43.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-43.1. Action by written ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or ~~operating agreement~~ the bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot under this section is valid only if:
 - a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
 - b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by written ballot must:
 - a. Indicate the number of responses needed to meet the quorum requirements;
 - b. State the percentage of approvals necessary to approve each matter other than election of governors; and
 - c. Specify the time by which a ballot must be received by the limited liability company in order to be counted.
5. Except as otherwise provided in the articles or ~~operating agreement~~ the bylaws, a written ballot may not be revoked.

SECTION 72. AMENDMENT. Subsection 1 of section 10-32-44 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.

SECTION 73. AMENDMENT. Section 10-32-48 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. 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, provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.
 - b. Any copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
 - c. 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 unless the appointment is coupled with an interest in the membership interests of the limited liability company. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.~~
3. An appointment may be revoked at will unless the appointment is coupled with an interest, in which case the appointment may not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person or signing and delivering to the manager or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a later appointment. Revocation 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 or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager authorized to tabulate votes before the proxy exercises the authority under that appointment.
5. 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. Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
7. 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.~~

SECTION 74. AMENDMENT. Subsection 2 of section 10-32-48.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Unless the articles, a member-control agreement, or ~~operating agreement~~ the bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the member if:
 - a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
 - b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the limited liability company requests, evidence of fiduciary status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the limited liability company requests, evidence of this status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;
 - d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the limited liability company requests, evidence acceptable to the limited liability

company of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

- e. Two or more persons hold the membership interests as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

SECTION 75. AMENDMENT. Section 10-32-49 of the North Dakota Century Code is amended and reenacted as follows:

10-32-49. Member voting agreements.

1. ~~Except as provided in subsection 2, a~~ 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 4 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 4 of section 10-32-109.~~

SECTION 76. AMENDMENT. Section 10-32-50 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.
 - 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 4 of section 10-32-07 to be contained in the articles, or in the operating agreement, the same result can be accomplished through a~~ A member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section. subsection 2 may relate to, without limitation, the:
 - (1) Management of the limited liability company's business;
 - (2) Declaration and payment of distributions;

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. With respect to the validity of a member-control agreement:

- a. A member-control agreement described in subsection 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise:
 - (1) All members of the limited liability company, regardless of voting power; and
 - (2) All persons who are parties to contribution agreements that on that date have not yet been fully performed, regardless of whether those parties will, when members, have voting power.
 - b. A member-control agreement may also include as parties persons who are neither members nor parties to a contribution agreement.
 - c. A member-control agreement may provide for amendment of the member-control agreement through nonunanimous means.
3. ~~An~~ A member-control agreement valid under subsections 1 and 2 is enforceable by and against persons who are parties to it the member-control agreement and is also binding upon and enforceable against only those persons and other persons who acquire an interest in a membership interest or in a contribution agreement having knowledge of the existence of the member-control agreement. A signed original of the member-control agreement must be filed with the limited liability company.
- a. The limited liability company shall note in its the limited liability company's required records that the members' interests are governed by a member-control agreement entered into under this section.
 - b. 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. ~~6.~~ If ~~an~~ a member-control agreement authorized under this section takes away from any person any of the authority and responsibility ~~which~~ that the person would otherwise possess under this chapter, the effect of the member-control 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.~~ 7. This section does not apply to, limit, or restrict agreements otherwise valid, ~~nor is~~ and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

SECTION 77. AMENDMENT. Subdivision d of subsection 1 of section 10-32-51 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. Copies of any currently effective written ~~operating agreement~~ bylaws;

SECTION 78. AMENDMENT. Section 10-32-54 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~, but not an amendment to a member-control agreement, which 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; or

- (6) Establishes or changes the conditions for or consequences of expulsion;
 - ~~(7) Changes the statement required under subdivision f of subsection 4 of section 10-32-07; or~~
 - ~~(8) Changes the statement required under subdivision g of subsection 4 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, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, 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 4 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; or
 - e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, ~~the operating agreement~~ bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for ~~their~~ the dissenting members' 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.
 - 3. If a date is fixed according to subsection 1 of section 10-32-40.1 for the determination of members entitled to receive notice of and to vote on an action described in subsection 1, only members as of the date fixed may exercise dissenters' rights.

SECTION 79. AMENDMENT. Section 10-32-55 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 4 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.
 - e. b. "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.
 - c. "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.
 - 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 is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights ~~must~~ shall 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~~ may not vote the membership interests in favor of the proposed action.
4. After the proposed action ~~has been~~ is 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; and 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 required by subsection 4 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; and 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 limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. 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.

⁸² **SECTION 80. AMENDMENT.** Section 10-32-56 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board of governors or pursuant to a member-control agreement, 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:

⁸² Section 10-32-56 was also amended by section 28 of House Bill No. 1045, chapter 50.

- a. Be of one class, without series, unless a member-control agreement or 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~~ 10-32-40.1, 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~~ or a member-control agreement fixes 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 or a member-control agreement, 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 established in the articles of organization, in a member-control agreement, or by resolution of the board of governors.
 7. A statement ~~executed~~ signed 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 or a member-control agreement. 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.

SECTION 81. AMENDMENT. Section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement, 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 or a member-control agreement, 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.

SECTION 82. AMENDMENT. Subsection 7 of section 10-32-58 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. ~~A~~ Unless otherwise provided in the articles of organization or a member-control agreement, 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.

SECTION 83. AMENDMENT. Section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization or a member-control agreement, 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~~ Unless otherwise provided in the articles of organization or a member-control agreement, 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.

SECTION 84. AMENDMENT. Section 10-32-60 of the North Dakota Century Code is amended and reenacted as follows:

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization, in a member-control agreement, 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.

SECTION 85. AMENDMENT. Section 10-32-61 of the North Dakota Century Code is amended and reenacted as follows:

10-32-61. Interim distributions. Except as provided in the articles of organization or a member-control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the ~~operating agreement~~ bylaws or by the act of the board of governors.

SECTION 86. AMENDMENT. Section 10-32-62 of the North Dakota Century Code is amended and reenacted as follows:

10-32-62. Distribution in kind. Except as provided in the articles of organization or a member-control agreement, 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.

SECTION 87. AMENDMENT. Subdivision c of subsection 1 of section 10-32-64 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. 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~~, a member-control agreement, the bylaws, or an agreement.

SECTION 88. AMENDMENT. Subsection 1 of section 10-32-66 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~subsections~~ subsection 1 or 4 of section 10-32-64 or a restriction contained in the articles of organization ~~or operating agreement~~, a member-control agreement, the bylaws, or an agreement, and fails to comply with the standard of conduct provided in section 10-32-86, is liable to the limited liability company, ~~its~~ the limited liability company's receiver, or any other person winding up ~~its~~ the limited liability company's affairs, 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.

SECTION 89. AMENDMENT. Subsection 2 of section 10-32-67 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ the bylaws, 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.

- a. If a meeting is held, the person or persons calling the meeting shall give at least three ~~days~~ days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.
- b. Organizers and governors may waive notice of an organizational meeting in the same manner ~~that~~ a governor may waive notice of meetings of the board of governors under subsection 5 of section 10-32-80.

SECTION 90. AMENDMENT. Section 10-32-68 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-68. ~~Operating agreement~~ Bylaws.

1. A limited liability company may; ~~but need not,~~ have bylaws, which may be known as an operating agreement. The ~~operating agreement bylaws~~ 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 bylaws~~ only if the act expressly states that it is intended to constitute or revise the ~~operating agreement bylaws~~.
2. ~~An initial operating agreement~~ Initial bylaws 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 or a member-control agreement to the members, the power to adopt, amend, or repeal the ~~operating agreement bylaws~~ 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 bylaws~~ adopted, amended, or repealed by the board of governors. After the adoption of the initial ~~operating agreement bylaws~~, the board of governors may not adopt, amend, or repeal ~~an operating agreement~~ a bylaw 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~~ the governors' classifications, qualifications, or terms of office, but may adopt or amend ~~an operating agreement~~ a bylaw provision to increase the number of governors.
3. Unless the articles or ~~operating agreement provides~~ bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal ~~operating agreement provisions~~ the bylaws adopted, amended, or repealed by the board of governors and

the resolution must set 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. The articles or ~~operating agreement~~ bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the ~~operating agreement~~ bylaws.

SECTION 91. AMENDMENT. Section 10-32-70 of the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or the ~~operating agreement~~ bylaws. 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~~ bylaws.

SECTION 92. AMENDMENT. Section 10-32-71 of the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or ~~operating agreement~~ the bylaws.

SECTION 93. AMENDMENT. Section 10-32-72 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-72. Terms.

1. With respect to length of terms:

- a. Unless fixed terms are provided for in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, a governor serves for an indefinite term that expires at the next regular meeting of the members.
 - (1) A fixed term of a governor, other than an ex officio governor, must not exceed five years.
 - (2) An ex officio governor serves as long as the governor holds the office or position designated in the articles or ~~operating agreement~~ bylaws.
- b. Unless the articles, the bylaws, or ~~operating agreement~~ a member-control agreement provides otherwise, a governor holds office until expiration of the term for which the governor was elected or appointed and until a successor is elected and has qualified or until the earlier death, resignation, removal, or disqualification of the governor.
- c. A decrease in the number of governors or term of office does not shorten an incumbent ~~director's~~ governor's term.

- d. Except as provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, the term of a governor filling a vacancy expires at the end of the unexpired term that the ~~director~~ governor is filling.
2. The articles, a member-control agreement, or ~~operating agreement~~ the bylaws may provide for staggering the terms of governors by dividing the total number of governors into groups.

SECTION 94. AMENDMENT. Section 10-32-74 of the North Dakota Century Code is amended and reenacted as follows:

10-32-74. Compensation. Subject to any limitations in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, the board of governors may fix the compensation of governors.

SECTION 95. AMENDMENT. Section 10-32-75 of the North Dakota Century Code is amended and reenacted as follows:

10-32-75. Classification of governors. Governors may be divided into classes as provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

SECTION 96. AMENDMENT. Section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

10-32-76. Cumulative voting for governors.

1. ~~Each~~ Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, 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~~ An amendment to the articles, a member-control agreement, or ~~operating agreement~~ that the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not 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.

SECTION 97. AMENDMENT. Subsection 1 of section 10-32-78 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The provisions of this section apply unless modified by the articles of organization, a member-control agreement, or the ~~operating agreement~~ bylaws.

SECTION 98. AMENDMENT. Subdivision a of subsection 1 of section 10-32-78.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The governor engaged in fraudulent, dishonest conduct, ~~or~~ gross abuse of authority; or discretion with respect to the limited liability company or a final judgment has been entered finding ~~that~~ the governor ~~has~~ violated section ~~40-33-86~~ 10-32-86; and

SECTION 99. AMENDMENT. Subsection 1 of section 10-32-79 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws:
 - 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.

SECTION 100. AMENDMENT. Section 10-32-80 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a member-control agreement, or ~~operating agreement~~ the bylaws 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 articles, ~~operating agreement~~ bylaws, or board of governors fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or ~~operating agreement~~ the bylaws 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 is a quorum. Participation in a

meeting by this means constitutes personal presence 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 this means constitutes personal presence at the meeting.
3. Unless the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three 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, a member-control agreement, or ~~operating agreement~~ the bylaws otherwise require it.
4. If the date, time, and place of a board of governors meeting ~~have been~~ are provided in the articles or ~~operating agreement~~ bylaws, or announced at a previous meeting of the board of governors, ~~no~~ notice is not 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.

SECTION 101. AMENDMENT. Section 10-32-81 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws 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 the vote of a governor present at the meeting 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.

SECTION 102. AMENDMENT. Section 10-32-82 of the North Dakota Century Code is amended and reenacted as follows:

10-32-82. Quorum. A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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.

SECTION 103. AMENDMENT. Section 10-32-83 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except ~~where~~ if this chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

SECTION 104. AMENDMENT. Subsection 1 of section 10-32-84 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors ~~that~~ which would be required to take the same action at a meeting of the board of governors at which all governors were present.

SECTION 105. AMENDMENT. Subsection 2 of section 10-32-85 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Committee members must be individuals. Unless the articles, a member-control agreement, or operating agreement the bylaws provide for a different membership or manner of appointment, a committee consists of one or more ~~persons~~ individuals, who need not be governors, appointed by the board.

SECTION 106. AMENDMENT. Section 10-32-86 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-86. Standard of conduct for governors.

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 from voting on the action by the articles; by the ~~operating agreement~~ bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.
 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 or a member-control agreement. ~~The~~ Neither the articles nor a member-control agreement 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.

SECTION 107. AMENDMENT. Subdivision b of subsection 2 of section 10-32-87 of the 1997 Supplement to 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 ~~manager's~~ governor's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by:
 - (1) The owners of two-thirds of the voting power of membership interests entitled to vote ~~that~~ which are owned by persons other than the interested governor; or
 - (2) The unanimous affirmative vote of all members, whether or not entitled to vote;

SECTION 108. AMENDMENT. Section 10-32-88 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-88. Managers. A limited liability company must consist of one or more individuals eighteen years of age or more, ~~and~~ exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents and a secretary, as may be provided in the ~~operating agreement~~ bylaws. 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~~ bylaws.

SECTION 109. AMENDMENT. Section 10-32-89 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. Unless otherwise provided by the articles of organization, a member-control agreement, operating agreement the bylaws, or a resolution adopted by the board of governors and which is not inconsistent with the articles, a member-control agreement, or operating agreement, ~~provides otherwise the bylaws,~~ the managers ~~shall~~ have the following duties:

1. The president shall:
 - a. Have general active management for the business of the limited liability company;
 - b. When present, preside at all meetings of the board of governors and of the members;
 - c. See that all orders and resolutions of the board of governors are carried into effect;

- d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except ~~in cases in which~~ if the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement, the bylaws, or the board of governors to some other manager or agent of the limited liability company;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and
 - f. Perform other duties prescribed by the board of governors.
2. The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board of governors shall:
 - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Perform other duties and have other powers as the board of governors may from time to time prescribe.
3. The treasurer shall:
 - a. Keep accurate financial records for the limited liability company;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
 - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
 - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
 - e. Give to the president and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
 - f. Perform other duties prescribed by the board of governors or by the president.
4. The secretary, if any, shall:
 - a. Attend all meetings of the board of governors, all meetings of the members, and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board of governors; and
 - d. Perform other duties prescribed by the board of governors.

5. Any other managers and agents of the limited liability company, as between ~~themselves~~ the managers and agents and the limited liability company, ~~have the authority and~~ shall perform the duties in the management of the limited liability company as may be provided in the articles, a member-control agreement, or the ~~operating agreement~~ bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member control agreement, or the ~~operating agreement~~ bylaws.

SECTION 110. AMENDMENT. Section 10-32-94 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. Except as otherwise provided in the articles or ~~operating agreement~~ bylaws, 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. The removal is without prejudice to any contractual rights of the officer.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or ~~operating agreement~~, or the bylaws; in the manner determined by the board of governors; or pursuant to section 10-32-92.

SECTION 111. AMENDMENT. Section 10-32-95 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles ~~or operating agreement~~, a member-control agreement, the bylaws, or by a resolution adopted by the board of governors, 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 individuals. 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.

SECTION 112. AMENDMENT. Section 10-32-99 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
 - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.
- d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, 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, a member-control agreement, or operating agreement ~~either the bylaws~~ 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 a member-control agreement, or the date of adoption of a provision in the ~~operating agreement~~ bylaws 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, other than the members who are a party 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 later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written 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. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.
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~~ This section may be construed to does not limit the power of the limited liability company to indemnify ~~other~~ persons other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

SECTION 113. AMENDMENT. Section 10-32-100 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ and
 - b. With a domestic corporation under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
 - c. 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. With respect to an exchange:
 - a. 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.

- b. A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
 - c. 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 and in chapter 10-19.1.
 - e. d. 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.
3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of ~~its~~ the limited liability company's property and assets in the manner provided in section 10-32-108.
 4. A limited liability company may participate in a merger only as permitted by this section.

SECTION 114. AMENDMENT. Subdivision b of subsection 1 of section 10-32-101 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The terms and conditions of the proposed merger or exchange;

SECTION 115. AMENDMENT. Section 10-32-102 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-102. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the ~~affirmative vote of a majority of the governing board members present at a meeting of the governing board as required by section 10-19.1-46 or 10-32-83~~ of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. ~~Written~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent 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~~ 10-19.1-73 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 as required by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3, a class or series of ownership interests of the constituent 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 a member-control agreement, 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 constituent organization is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger 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.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization is not required if:
 - a. The articles of the ~~corporation~~ will not be amended in the transaction;
 - b. Each ~~holder~~ owner of ~~shares of the corporation~~ that ownership interests in the constituent organization which were outstanding immediately before the effective time of the transaction will hold the same number of ~~shares~~ ownership interests with identical rights immediately after that time;
 - c. The voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately after the merger, plus the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote issuable on conversion of or on the exercise of rights to purchase securities issued in the transaction, will not exceed by more than twenty percent, the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately before the transaction; and
 - d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately after the merger, plus the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization 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~~ ownership interests of the

~~corporation~~ constituent organization immediately before the transaction. "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership interests of the ~~corporation~~ that constituent organization which entitle ~~their holders~~ the ownership interests owners to participate without limitation in distributions by the ~~corporation~~ constituent organization.

5. If the merger or exchange is with a domestic corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 10-19.1.

SECTION 116. AMENDMENT. Subsection 1 of section 10-32-103 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared ~~that~~ which 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 each constituent organization pursuant to subsection 2 or 3 of section 10-32-102; chapter 10-19.1 or this chapter.~~
 - (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.

SECTION 117. AMENDMENT. Section 10-32-104 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 directly, or indirectly through related corporations or limited liability companies:
 - a. May merge the subsidiary into ~~itself~~ the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of ~~itself~~ the parent or any subsidiary; or
 - b. May merge ~~itself~~ the parent, or ~~itself~~ the parent and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the ~~affirmative vote of a majority of the directors of the parent as required by section 10-19.1-46 or by the governors of the parent present as required by section 10-32-83~~ must set forth a plan of merger ~~that~~ which contains:

- a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
 - 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;
 - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent ~~for~~ on surrender of any ownership interests of the parent; and
 - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless ~~it~~ the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests 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 corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which ~~it~~ the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
 4. A copy of the plan of merger must be mailed to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger.
 5. Articles of merger must be prepared ~~that~~ which contain:
 - a. The plan of merger;
 - b. The number of outstanding ownership interests of each class and series of ~~each~~ the subsidiary that is a constituent organization and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations;
 - c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of each subsidiary that is a constituent organization in the merger; and
 - d. A statement that the plan of merger has been approved by the parent under this section.
 6. Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, 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.

7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving constituent organization in the merger or ~~its~~ the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
8. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section ~~10-19.1-87 and section~~ 10-19.1-88 or to subsection 2 of section 10-32-54 ~~or section 10-22-55~~. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under ~~sections~~ section 10-19.1-87 and ~~10-19.1-88~~ or under ~~sections~~ section 10-32-54 and ~~10-32-55~~. Except as provided in this subsection, ~~sections~~ 10-19.1-87 and ~~10-19.1-88 and sections~~ 10-32-54 and ~~10-32-55~~ do not apply to any merger affected under this section.
9. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

SECTION 118. AMENDMENT. Section 10-32-105 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-105. Abandonment of plan of merger.

1. After a plan of merger ~~has been~~ is 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~~ the plan of merger may be abandoned:
 - a. With respect to approval of the abandonment:
 - (1) 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,~~ owners as required by section 10-19.1-74 or 10-32-42;
 - (2) ~~if~~ 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~~ as required by section 10-19.1-46 or 10-32-83; and

- (3) If the merger or exchange is with a foreign corporation or foreign limited liability company, if abandonment is approved in the manner required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized;
- 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 before the effective date of the plan, a resolution by the governing board of any constituent organization abandoning the plan of merger or exchange may be approved by the ~~affirmative vote of a majority of the board members present~~, as required by section 10-19.1-46 or 10-32-83 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~~ constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent 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~~ The text of the resolution ~~approved by the affirmative vote of a majority of the board members present~~ abandoning the plan.
 4. If the certificate of merger has been issued, the governing board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

SECTION 119. AMENDMENT. Subdivision a of subsection 2 of section 10-32-106 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The constituent organizations become a single constituent organization entity, the surviving ~~constituent organization~~ corporation, or surviving limited liability company;

⁸³ **SECTION 120. AMENDMENT.** Section 10-32-107 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-107. Merger or exchange with foreign limited liability company or foreign corporation.

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 jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized; and
 - b. With respect to an exchange, the constituent organization ~~whose of which~~ the ownership interests will be acquired is ~~either~~ a limited liability company or a domestic corporation, regardless of whether ~~or not~~ the exchange is permitted by the laws of the state jurisdiction 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 of the jurisdiction under which ~~it was~~ the foreign corporation or foreign limited liability company is incorporated or organized or by under which ~~it~~ the foreign corporation or foreign liability company is governed.
3. If the surviving organization in a merger will be a domestic limited liability company, ~~it~~ the surviving organization 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~~ the surviving organization shall comply, as the case may be, with the provisions of chapter ~~40-22~~ 10-19.1 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~~ the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;

⁸³ Section 10-32-107 was also amended by section 29 of House Bill No. 1045, chapter 50.

- b. An irrevocable appointment of the secretary of state as ~~its~~ the surviving organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded; and
- c. An agreement that ~~it~~ the surviving organization promptly will ~~promptly~~ pay to the dissenting owners of ownership interests of each constituent domestic limited liability company and constituent domestic corporation the amount, if any, to which ~~they~~ the dissenting owners are entitled under section 10-19.1-88 or 10-32-55; ~~as the case may be.~~

SECTION 121. AMENDMENT. Section 10-32-109 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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;
 - e. For a limited liability company with articles of organization filed with the secretary of state:
 - (1) ~~Except~~ Before July 1, 1999, except as provided in subsection 2 and except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:
 - (~~1~~) (a) Death of any member;
 - (~~2~~) (b) Retirement of any member;
 - (~~3~~) (c) Resignation of any member;
 - (~~4~~) (d) Redemption of a member's complete membership interest;
 - (~~5~~) (e) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
 - (~~6~~) (f) A buyout of a member's membership interest under section 10-32-119 ~~that~~ which leaves that member with no governance rights;

- ~~(7)~~ (g) Expulsion of any member;
- ~~(8)~~ (h) Bankruptcy of any member;
- ~~(9)~~ (i) Dissolution of any member; or
- ~~(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)~~ (j) The occurrence of any other event that terminates the continued membership of a member in the limited liability company; but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if:
 - ~~(a)~~ Either there are at least two remaining members or a new member is admitted as provided in section 10-32-06; and
 - ~~(b)~~ The existence and business of the limited liability company is continued either by the consent of all remaining members under a right to consent stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership; or under a separate right to continue stated in the articles of organization; or
- (2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:
 - (a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution; or
 - (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;
- f. A merger in which the limited liability company is not the surviving organization; or
- g. When terminated by the secretary of state pursuant to section 10-32-149.
- 2. For a limited liability company with articles of organization filed with the secretary of state before July 1, 1999, the limited liability company is not dissolved and is not required to be wound up by reason of any event terminating the continued membership of a member:

- a. If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of every remaining member obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization or a member-control agreement; or
 - b. If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member within one hundred eighty days after the termination.
 3. 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~~ the limited liability company's 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.
3. 4. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights; or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

SECTION 122. AMENDMENT. Paragraph 1 of subdivision b of subsection 1 of section 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

- (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~~

SECTION 123. AMENDMENT. Subdivision b of subsection 3 of section 10-32-113 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. ~~Subject to any business continuation agreement, to~~ 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

SECTION 124. AMENDMENT. Section 10-32-114 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants. ~~When~~ If a notice of dissolution ~~has been~~ is 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.

1. If notice to creditors and claimants is given, ~~it~~ the notice 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 ~~32~~ 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 to creditors and claimants:
 - a. The limited liability company 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 the notice to accept or reject. 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 that claim 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 that claim 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.~~ 4. Articles of termination for a limited liability company dissolving under this section ~~that has given~~ which gave 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~~ expires and the payment of claims of all creditors and claimants filing a claim within that period ~~has been~~ are made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 4 ~~has expired~~ 3 expires 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 ~~3~~.
- ~~6.~~ 5. The articles of termination for a limited liability company that ~~has given~~ gave notice to creditors and claimants under this section 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~~ was made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 ~~expired~~ 3 expires;
 - b. That the remaining property, assets, and claims of the limited liability company ~~have been~~ were distributed in accordance with section 10-32-131, or that adequate provision ~~has been~~ was 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 ~~3~~ or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against ~~it~~ the limited liability company in a pending proceeding.

SECTION 125. AMENDMENT. Section 10-32-119 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or governors of any limited liability company or as 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 an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is

fair and equitable to all parties under all of the circumstances of the case.

- a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - b. Within five days after entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
 - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 1 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
 - d. The purchase price must be paid in one or more installments as agreed on by the parties or, if no agreement can be reached within forty days of entry of the order, as ordered by the court upon entry of an order for the sale of a membership interest under this subsection and provided the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.
4. 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. 5. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements between or among one or more members and the limited liability company are presumed to reflect the parties reasonable expectations concerning matters dealt with in the agreements.
5. 6. 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~~ may 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.

- ~~6.~~ 7. 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~~ member-control 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.
- ~~7.~~ 8. 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.
- ~~8.~~ 9. 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.

SECTION 126. AMENDMENT. Subsection 2 of section 10-32-122 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An action ~~must~~ may 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, a member-control agreement, or the ~~operating agreement~~ bylaws 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.

SECTION 127. AMENDMENT. Section 10-32-131 of the North Dakota Century Code is amended and reenacted as follows:

10-32-131. Disposition of assets upon dissolution.

1. Subject to subsection ~~4~~ 2, ~~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;

4. A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member-control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments, if any, to dissenters due to winding up a merger under subsection 3 of section 10-32-112, is subject to offset of these damages.

SECTION 128. AMENDMENT. Section 10-32-140 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-140. Foreign limited liability company - Amendments to the certificate of authority.

1. If any statement in the application for a certificate of authority by a foreign limited liability company ~~was~~ is false when made or ~~any arrangements or other facts described have changed, making the application inaccurate in any respect~~ the foreign limited liability company changes the foreign limited liability company's name or purposes sought in this state, the foreign limited liability company ~~shall~~ promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in ~~its~~ the foreign limited liability company's name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.
2. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.
3. A foreign limited liability company that changes the foreign limited liability company's name and applies for an amended certificate of authority and that is the owner of a trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign limited liability company's name in each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority.

SECTION 129. AMENDMENT. Section 10-32-142 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-142. Foreign limited liability company - Merger of foreign limited liability company authorized to transact business in this state. ~~Whenever~~ If 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~~ the foreign limited liability company 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. Any foreign organization, which is the surviving organization in a merger and which will continue to transact business in this state, shall procure ~~either a new or amended~~ certificate of authority if not previously authorized to transact business in this state.

SECTION 130. AMENDMENT. Subsection 2 of section 10-32-149 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 46 of section 10-32-02, the articles, ~~operating agreement~~ the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, ~~it~~ the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy ~~all any annual reports~~ report provided for in this section after ~~they have been~~ the annual report is on file for six years.

SECTION 131. AMENDMENT. Subsection 1 of section 10-32-150 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - (1) After the date prescribed in subsection 3 of section 10-32-149, fifty dollars; and
 - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
- w. Filing any process, notice, or demand for service, twenty-five dollars.
- x. Submitting any document for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
- y. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

SECTION 132. AMENDMENT. Section 10-33-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-01. Definitions. For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
2. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.
 - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
3. "Board" means the board of directors of a corporation.
4. "Board member" means an individual serving on the board.
5. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
6. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
7. "Director" means a member of the board.
8. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
 - a. The following have been delivered to the secretary of state and have been determined by the secretary of state to conform to law:
 - (1) A signed original, or a legible facsimile ~~copy~~ telecommunication of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and
 - (2) The fees provided for in section 10-33-140;
 - b. And the secretary of state has:

- (1) Endorsed on the original the word "filed", and the month, day, and year; and
 - (2) Recorded the document in the office of the secretary of state.
9. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.
10. "Good faith" means honesty in fact in the conduct of an act or transaction.
11. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
 - a. If the person intentionally does the act or causes the result prohibited by the statute; or
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
13. "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.
14. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
15. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
16. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
18. "Notice":
 - a. Is given by a member 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; and
 - b. In all other cases, is given to a person:

- (1) When mailed to the person at an address designated by the person or at the ~~last known~~ 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 then residing therein.
 - c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
19. "Officer" means an individual who is more than eighteen years of age and who is:
- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
 - b. Considered elected as an officer pursuant to section 10-33-52.
20. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; joint venture; association; business trust; estate; trust; enterprise; or any other legal or commercial entity.
21. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
 - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
22. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.
23. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;

- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
 - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
24. "Signed" means ~~that~~ the signature of a person is placed on a document, as provided in subsection 39 of section 41-01-11, and:
- a. 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~~ sign by this chapter, the articles, the bylaws, a resolution approved by the affirmative vote of the required proportion or number of the directors as required by section 10-33-42, or the required proportion or number of members with voting rights, if any, as required by section 10-33-72; and
 - b. With respect to a document ~~that is~~ not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.
25. "Subsidiary" of a specified corporation means:
- 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.
26. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
27. "Vote" includes authorization by written action.
28. "Written action" means:
- a. A written document signed by all of the persons required to take the action; or
 - b. The counterparts of a written document signed by any of the persons taking the action. Each counterpart constitutes the action of the persons signing it, and all the counterparts are one written action by all of the persons signing them.

⁸⁴ **SECTION 133.** A new subsection to section 10-33-06 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Subsection 5 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be in the bylaws by another provision of this chapter.

SECTION 134. AMENDMENT. Subsection 1 of section 10-33-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The corporate name:
 - a. Must be in the English language or in any other language expressed in English letters or characters.
 - b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
 - c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.
 - d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.
 - e. f. Unless a document in compliance with subsection 2 of this section is filed with the articles, may not be the same as or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state; or domestic, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
 - (c) A limited liability company;
 - (d) A limited partnership; ~~or~~
 - (e) A limited liability partnership; or

⁸⁴ Section 10-33-06 was also amended by section 30 of House Bill No. 1045, chapter 50.

- (f) A limited liability limited partnership.
- (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- (3) A fictitious name registered in the manner provided in chapter 45-11; or
- (4) A trade name registered in the manner provided in chapter 47-25.

SECTION 135. AMENDMENT. Subsection 4 of section 10-33-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:

- a. The fee prescribed in section 10-33-140 for change of registered office must be refunded ~~when~~ if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
- b. The fee fees prescribed in section 10-33-140 does for change of registered agent, change of registered office, and consent of registered agent do not apply ~~when~~ if the registered agent or registered office is established or changed in the annual report.

SECTION 136. A new subsection to section 10-33-17 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Assets held by a corporation, including income or fees from services, are restricted to the uses and purposes for which the property was received or held.

SECTION 137. AMENDMENT. Section 10-33-49 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-49. Officers. The officers of a corporation must be individuals who are eighteen years of age or more, and must include a president; and secretary; ~~and~~ treasurer. The officers of the corporation may also include a treasurer, one or more vice presidents, and any other officers or agents as may be prescribed by the bylaws. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws unless the articles or bylaws provide ~~that~~ the members may elect the officers.

SECTION 138. AMENDMENT. Subsection 3 of section 10-33-50 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The treasurer, if any, shall:
- a. Keep accurate financial records for the corporation;

- b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
- c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
- d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
- e. Give to the president and the board, ~~whenever~~ when requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
- f. Perform other duties prescribed by the board or by the president.

SECTION 139. AMENDMENT. Subsection 3 of section 10-33-54 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of ~~president or treasurer, if any, or president,~~ must, be filled for the unexpired part of the term in the manner provided in the articles or bylaws; ~~or as determined by the board,~~ or under section 10-33-52.

SECTION 140. AMENDMENT. Section 10-33-84 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-84. Indemnification.

1. For purposes of this section:
 - a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a director, the position of director in a corporation;
 - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
 - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee,

employee, or agent, as the case may be, of the other organization or employee benefit plan.

- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
 - d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
2. Subject to subsection 5, a corporation 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 excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' 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 excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' 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 10-33-45, 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 corporation, 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 corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, governor, officer, manager, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation 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 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 corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation 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 corporation, 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 shall be accepted without reference to financial ability to make the repayment.

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 monetary limits on indemnification or advances for expenses, if the prohibition 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~~ before 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.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' 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 determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors 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, consisting solely of two or more directors not at the time parties to the proceeding, duly designated

to act in the matter by a majority of the full board including directors 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 or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
- d. If a determination is not made under subdivisions a, b, and c, by the members with voting rights, other than members who are a party 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:
 - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) 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.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 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, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
9. A corporation 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 corporation would have been required to indemnify the person against the liability under this section.
10. A corporation with members with voting rights 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 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.

11. ~~Nothing in this~~ This section may be construed to does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, an officer, an employee, or a member of a committee of the board by contract or otherwise.

SECTION 141. AMENDMENT. Subsection 2 of section 10-33-87 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~When~~ If a constituent corporation has members with voting rights with respect to mergers and consolidations as required by section 10-33-42, the board of directors of the corporation shall adopt a resolution by a majority vote of all directors approving a proposed plan of merger or consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to the members, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members who vote upon the proposed plan.

SECTION 142. AMENDMENT. Section 10-33-95 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-95. Certain assets not to be diverted. ~~When~~ If a corporation dissolves, merges ~~or~~, substantially changes the use or purposes for which the corporation will use corporate assets, consolidates, transfers ~~its~~ corporate assets, or grants a mortgage or other security interest in ~~its~~ corporate assets, assets of the corporation or a constituent corporation; and assets subsequently received by a single corporation after a merger or consolidation; may not be diverted from the uses and purposes for which the assets ~~have been~~ were received and held; or from the uses and purposes expressed or intended by the original donor.

SECTION 143. AMENDMENT. Section 10-33-130 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-130. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation ~~was~~ is false when made or any arrangements or other facts described ~~have changed~~ change, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on

file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority.

SECTION 144. AMENDMENT. Section 34-09-06 of the 1997 Supplement to 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~~ the employer's 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 the~~ the 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~~ bylaws of ~~such the~~ the limited liability company to execute valid and binding contracts on behalf of the limited liability company, and any ~~such~~ contract under this section must be executed on behalf of the labor union in the name of the labor union by the president ~~or,~~ the secretary, or other duly authorized officer of ~~such the~~ the labor union. ~~Such~~ A contract under this section is equally binding as to all ~~its~~ of the contract's terms and conditions against both the employer and the labor union.

SECTION 145. AMENDMENT. Section 45-10.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-01. (101) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Business" includes every trade, occupation, and profession.
3. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
3. 4. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in ~~his~~ that partner's capacity as a partner.
5. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
4. 6. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.
5. 7. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. That ~~either~~:

~~(1)~~ A a signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or

~~(2)~~ A a signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 ~~has been~~ was delivered to the secretary of state and ~~has been~~ was determined by the secretary of state to conform to law.

b. That the secretary of state shall then:

(1) Endorse on the original the word "filed" and the month, day, and year; and

(2) Record the document in the office of the secretary of state.

~~6.~~ 8. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

~~7.~~ 9. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

10. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

~~8.~~ 11. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

~~9.~~ 12. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

~~40.~~ 13. "Notice":

a. Is given to a limited partnership or to a partner of the limited partnership when in writing and mailed or delivered to the limited partnership or the partner at the registered office or principal executive office of the limited partnership.

b. In all other cases, is given to a person:

(1) When mailed to the person at an address designated by the person or at the ~~last known~~ 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 residing there.
 - c. Is given when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
41. 14. "Partner" means a general or limited partner.
42. 15. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
43. 16. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
44. 17. "Principal executive office" means:
- a. An office from which the limited partnership conducts business; or
 - b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.
45. 18. "Signed" means that the signature of a person ~~has been~~ is placed on a document, as provided in subsection 39 of section 41-01-11, and:
- a. With respect to a document required by this chapter to be filed with the secretary of state, means ~~that~~ the document ~~has been~~ is signed by a person authorized to ~~do so~~ sign the document by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - b. With respect to a document ~~that is~~ not required by this chapter to be filed with the secretary of state, means ~~that~~ the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.
46. 19. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

⁸⁵ **SECTION 146. AMENDMENT.** Subsection 1 of section 45-10.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The name of each limited partnership as set forth in ~~its~~ the limited partnership's certificate of limited partnership:
 - a. Must be in the English language or in another language expressed in English letters or characters.
 - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state.
 - c. May not contain the name of a limited partner unless:
 - (1) ~~It~~ Except as limited in subdivision g, the name is also the name of a general partner; or
 - (2) The business of the limited partnership ~~had been~~ has carried on under that name before the admission of that limited partner.
 - d. May not contain a word or phrase that indicates or implies ~~it~~ the limited partnership may not be organized under this chapter.
 - e. May not contain a word or phrase indicating or implying ~~it~~ the limited partnership is organized for a purpose other than a legal business purpose for which a limited partnership may be organized under this chapter.
 - f. May not contain a word or phrase indicating or implying ~~it~~ the limited partnership is organized other than for a purpose stated in ~~its~~ the limited partnership's certificate of limited partnership.
 - g. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of ~~these~~ these words.
 - h. May not be the same as; or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state; or domestic, unless there is filed with the articles a document in compliance with subsection ~~2 of this section~~ 3, of:
 - (a) Another limited partnership;

⁸⁵ Section 45-10.1-02 was also amended by section 66 of House Bill No. 1045, chapter 50.

- (b) A corporation;
 - (c) A limited liability company; ~~or~~
 - (d) A limited liability partnership; or
 - (e) A limited liability limited partnership;
- (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.

SECTION 147. A new subsection to section 45-10.1-04 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the filing fees provided in section 45-10.1-15.

SECTION 148. Section 45-10.1-04.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-04.1. Change of registered office or agent.

- 1. A limited partnership may change the limited partnership's registered office, change the limited partnership's registered agent, or state a change in the name of the limited partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-10.1-15, a statement containing:
 - a. The name of the limited partnership;
 - b. The new address of the limited partnership's registered office, if the address of the limited partnership's registered office is to be changed;
 - c. The name of the limited partnership's new registered agent, if the limited partnership's registered agent is to be designated or changed;
 - d. The name of the limited partnership's registered agent as changed, if the name of the limited partnership's registered agent is to be changed;
 - e. A statement that the address of the limited partnership's registered office and the address of the business office of the limited partnership's 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 general partners.

2. A registered agent of a limited partnership 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 was given to the limited partnership at the limited partnership's principal executive office, or to a legal representative of the limited partnership. 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 partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.
4. The fee prescribed in section 45-10.1-15 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 149. AMENDMENT. Section 45-10.1-08 of the 1997 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~~ signed 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 registered office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04 of the limited partnership and the name of the limited partnership's registered agent at that address.
 - d. The name and address of the principal place of business of each general partner.
 - e. 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~~ on the date specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section which is within ninety days after the filing of the certificate of limited partnership with the secretary of state.

SECTION 150. AMENDMENT. Section 45-10.1-09 of 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.~~
 - e. 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~~ registered agent or change of address of registered 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~~ changes its name and that 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 151. AMENDMENT. Section 45-10.1-10 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-10. (203) Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation must be filed in the office of the secretary of state and set forth all of the following:

1. The name of the limited partnership.
2. ~~The date of filing of its certificate of limited partnership.~~
3. ~~The reason for filing the certificate of cancellation.~~
4. The later effective date, ~~which must be a date certain, of cancellation~~ if it the effective date is not to be effective upon the filing of the certificate. A later effective date may not be later than ninety days after the date on which the certificate is filed with the secretary of state.
5. 3. Any other information the general partners filing the certificate determine.

SECTION 152. AMENDMENT. Section 45-10.1-11 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-11. (204) Execution of certificates.

1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in the office of the secretary of state must be ~~executed in the following manner:~~ signed by at least one general partner.
 - a. ~~An original certificate of limited partnership must be signed by all general partners.~~
 - b. ~~A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner.~~
 - e. ~~A certificate of cancellation must be signed by all general partners.~~
2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.
3. The ~~execution~~ signing of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ in the certificate are true.

SECTION 153. AMENDMENT. Section 45-10.1-14 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-14. ~~Renewal of certificate - Filing with secretary~~ Secretary of state - Cancellation Annual report of limited partnership and foreign limited partnership.

Any certificate of limited partnership or registration of foreign limited partnership filed under this chapter must be renewed every five years from the date of the initial filing. Limited partnerships existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five years thereafter. The statement of renewal must be executed by the limited partnership or foreign limited partnership on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days prior to the deadline for filing. The statement must include the name of the limited partnership or foreign limited partnership, the state or country of organization, the address of the registered office and the name of the registered agent, and a statement that the limited partnership or foreign limited partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not conform, the secretary of state shall promptly return the statement to the limited partnership or the foreign limited partnership for any necessary corrections, and the certificate of limited partnership or registration of foreign limited partnership must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any limited partnership or foreign limited partnership fails to file the statement of renewal when due, the secretary of state shall cancel the certificate of limited partnership or registration of foreign limited partnership and shall mail notice of cancellation to the address of the registered office.

1. Each limited partnership, and each foreign limited partnership 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 partnership or foreign limited partnership and the jurisdiction of origin.
 - b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the limited partnership's or foreign limited partnership's registered agent in this state at that address.
 - c. The address of the limited partnership's or foreign limited partnership's principal executive office.
 - d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
 - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as prescribed in subsection 15 of section 45-10.1-01 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may

destroy any annual reports provided for in this section after the annual report is on file for six years.

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the registration was filed by the secretary of state. A limited partnership existing before July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall file the limited partnership's or foreign limited partnership's first annual report before April first in the year of the expiration of the limited partnership's or foreign limited partnership's registration or renewal registration in effect on December 31, 1999.

 - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
 - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.

 - (1) If the report does not conform, the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
 - (2) 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 the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing to file an annual report that the limited partnership's or foreign limited partnership's certificate or registration is not in good standing and that the limited partnership's certificate or foreign limited partnership's registration may be terminated or revoked pursuant to subsection 5.

 - a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record.
 - b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-10.1-15, the secretary of state will restore the limited partnership's or foreign limited partnership's certificate or registration to good standing.
5. A limited partnership that does not file an 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.

- a. The secretary of state shall note the termination of the limited partnership's certificate on the records of the secretary of state and shall give notice of the action to the terminated limited partnership.
 - b. Notice by the secretary of state must be mailed to the limited partnership's last registered agent at the last registered office of record.
6. A foreign limited partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
 - a. The secretary of state shall note the revocation of the foreign limited partnership's registration on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
 - b. Notice by the secretary of state must be mailed to the foreign limited partnership's last registered agent at the last registered office of record.
7. A limited partnership that is terminated for failure to file an annual report, or a foreign limited partnership registration that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as prescribed in section 45-10.1-15. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.
8. A limited partnership or foreign limited partnership registration expiring between July 1, 1999, and December 31, 1999, may be renewed or canceled in the manner provided by this section before July 1, 1999.

SECTION 154. AMENDMENT. Section 45-10.1-15 of 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, one hundred dollars.
2. Filing a limited partnership amendment, 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~~ notice of renewal ~~transfer~~ transfer of a reserved limited partnership ~~or renewal of registration of foreign limited partnership name,~~ name, forty ~~ten~~ ten dollars.
7. Filing a cancellation of a reserved limited partnership name, ten dollars.

8. Filing a consent to use a deceptively similar name, ten dollars.
9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.
11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited partnership, one hundred dollars.
- ~~8.~~ 14. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.
- ~~9.~~ 15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
- ~~40.~~ 16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
- ~~44.~~ 17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- ~~42.~~ 18. Filing a ~~consent to use of a deceptively similar name, ten dollars.~~ an annual report of a limited partnership or foreign limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars; and
 - b. After the termination of the limited partnership or the revocation of the registration of a foreign limited partnership, the reinstatement fee of one hundred dollars.
19. Any document submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the document.

SECTION 155. AMENDMENT. Section 45-10.1-36 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-36. (603) Withdrawal of limited partner. ~~A~~ With respect to the withdrawal of a limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement.:

1. If the limited partnership is formed before July 1, 1999, and the agreement does not specify in writing the time when or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' ~~prior~~ advance written notice to each general partner at the general partner's

address on the books of the limited partnership at ~~its~~ the limited partnership's office in this state.

2. If the limited partnership is formed after June 30, 1999, or if the limited partnership is formed before July 1, 1999, and the partnership agreement does specify in writing the time when or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may not withdraw from a limited partnership except at the time when or upon the happening of events specified in writing in the partnership agreement.

SECTION 156. AMENDMENT. Section 45-10.1-51 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-51. (901) Foreign limited partnership - Law governing. Subject to the Constitution of North Dakota, the laws of the ~~state~~ jurisdiction under which a foreign limited partnership is organized govern ~~its~~ the organization and internal affairs and the liability of ~~its~~ the limited partners; ~~and a.~~ A foreign limited partnership may not be denied registration by reason of any difference between ~~those~~ the laws of the jurisdiction and the laws of this state.

SECTION 157. Section 45-10.1-51.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-51.1. Foreign limited partnership - Name. A foreign limited partnership may register under any name that would be available to a domestic limited partnership regardless of whether the name is the name under which the foreign limited partnership is authorized in the jurisdiction of origin. A fictitious name certificate must be filed as provided in chapter 45-11 if registering under a name other than the name as authorized in the jurisdiction of origin.

SECTION 158. AMENDMENT. Section 45-10.1-52 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-52. (902) Foreign limited partnership - Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state.

1. 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:
 4. a. The name of the foreign limited partnership and, if different, the name under which ~~it~~ the foreign limited partnership proposes to register and transact business in this state.
 2. b. The state and date of ~~its~~ the foreign limited partnership's formation.
 3. c. The general character of the business ~~it~~ the foreign limited partnership proposes to transact in this state.

4. d. 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 and which~~ must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company having a place of business in, and authorized to do business in, this state.
 5. e. 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~~ is revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
 6. f. The address of the principal office of the foreign limited partnership.
 7. g. The name and address of the principal place of business of each general partner.
 8. h. The address of the office at which is kept a list of the names and addresses of the limited partners and ~~their~~ the limited partners' 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.
2. 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~~ foreign limited partnership's jurisdiction of origin, the consent of registered agent, and the fees required under this chapter.
 3. If the secretary of state finds the application for registration conforms to law and the fees required by this chapter have been paid, the secretary of state shall file the application for registration and the consent of the registered agent.

SECTION 159. AMENDMENT. Section 45-10.1-53 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-53. (903) Foreign limited partnership - Filing of registration Registered agent and certain reports. ~~If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of~~ A foreign limited partnership registered in this state shall:

1. ~~Endorse on the application the word "Filed" and the month, day, and year of the filing.~~ Appoint and continuously maintain a registered agent and a registered office in the same manner as provided in section 45-10.1-04; and
2. ~~File the application in the office of the secretary of state.~~ File a report upon any change in the address of the registered office or upon any change in the name of the foreign limited partnership's registered agent as provided in section 45-10.1-04.1.

SECTION 160. Section 45-10.1-54.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-54.1. Foreign limited partnership - Admission of foreign limited partnership - Transacting business - Obtaining licenses and permits. A foreign limited partnership may not:

1. Transact business in this state or obtain any license or permit required by this state until the foreign limited partnership registers with the secretary of state.
2. Transact in this state any business that is prohibited to a domestic limited partnership organized under this chapter.
3. Be denied registration because the laws of the foreign limited partnership's jurisdiction of origin differ from the laws of this state.

SECTION 161. AMENDMENT. Section 45-10.1-55 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Foreign limited partnership - Changes and amendments.

1. If any statement in the application for registration of a foreign limited partnership ~~was~~ is false when made or any arrangements or other facts described ~~have changed~~ change, 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.
2. A foreign limited partnership that ~~amends its~~ changes the foreign limited partnership's name and files a statement as provided in subsection 1 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 or a limited liability limited partnership on file with the secretary of state; ~~must~~ shall effect a change of name in each of ~~such~~ the foregoing registrations ~~simultaneously with the filing of which is applicable when the foreign limited partnership files the certificate amending the registration of foreign limited partnership.~~
3. A foreign limited partnership ~~must~~ shall file a certificate of amendment, signed ~~and sworn to~~ by a general partner, ~~whenever~~ when a general partner that is a corporation files an amendment changing ~~its~~ the general partner's corporate name, or when ~~it~~ the general partner 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.
4. A foreign limited partnership ~~must~~ shall notify the secretary of state in writing ~~whenever~~ when a general partner changes the address of ~~its~~ the general partner's 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~~ a notice under this subsection. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

SECTION 162. AMENDMENT. Section 45-10.1-58 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-58. (908) Foreign limited partnership - Action by secretary of state.

1. The secretary of state may revoke the registration of a foreign limited partnership ~~for transacting~~ upon occurrence of any of the following:
 - a. Transacting business in this state in violation of sections 45-10.1-52 through 45-10.1-58; or that has failed to file a renewal statement as required by section 45-10.1-14. The secretary of state may not revoke the registration of a foreign limited partnership;
 - b. Failing to:
 - (1) Maintain a registered office as required by this chapter;
 - (2) Appoint and maintain a registered agent as required by this chapter;
 - (3) File a report upon any change in the address of the foreign limited partnership's registered office;
 - (4) File a report upon any change in the name or business address of the registered agent; or
 - (5) File in the office of the secretary of state any amendment to the foreign limited partnership's registration as specified in section 45-10.1-55; or
 - c. Misrepresenting any material matter in any registration, certificate, report, or other document submitted by the foreign limited partnership pursuant to this chapter.
2. Except for the annual report for which the registration may be revoked as provided in section 45-10.1-14, registration of a foreign limited partnership may not be revoked by the secretary of state unless the:
 - a. The secretary of state has given gave the foreign limited partnership not less than at least sixty days' notice by mail addressed to its the foreign limited partnership's registered office in this state and the or, if the foreign limited partnership fails to appoint and maintain a registered agent in this state, addressed to the foreign limited partnership's principal executive office of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation; and
 - b. During the sixty-day period, the foreign limited partnership failed to file the report of change regarding the registered office or 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 partnership to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the principal executive office of the foreign limited partnership.

SECTION 163. Section 45-10.1-58.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-58.1. Foreign limited partnership - Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

SECTION 164. Section 45-10.1-58.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-58.2. Foreign limited partnership - Transaction of business without registering.

1. A foreign limited partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited partnership registers with the secretary of state.
2. The failure of a foreign limited partnership to register does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any claim, action, suit, or proceeding in any court in this state.
3. A foreign limited partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited partnership's agent upon whom any notice, process, or demand may be served.
4. A foreign limited partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly registered, 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 this section.
5. A foreign limited partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not registered 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 partnership or any of the foreign limited partnership's general partners 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 partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership 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 partnership has otherwise complied with the provisions of this chapter.

SECTION 165. AMENDMENT. Section 45-11-08.2 of the North Dakota Century Code is amended and reenacted as follows:

45-11-08.2. Cancellation. The secretary of state shall cancel ~~any~~:

1. Any fictitious name filed before August 1, 1997, by a limited liability partnership upon written request for cancellation, from one or more partners, ~~with the~~ without a filing fee of ~~ten~~ dollars.
2. Any other fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.

SECTION 166. AMENDMENT. Section 45-13-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. In chapters 45-13 through 45-21 unless the context or subject matter otherwise requires:

1. "Business" includes every trade, occupation, and profession.
2. "Chief executive office" means an office from which the partnership conducts business.
3. "Debtor in bankruptcy" means a person who is the subject of:
 - a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - b. A comparable order under federal, state, or foreign law governing insolvency.
3. 4. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
5. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or the signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered to the secretary of state and was determined by the secretary of state to conform to law.
 - b. 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.
6. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.

7. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.
8. "Notice":
- a. Is given to a partnership or to a partner of a partnership when in writing and mailed or delivered to the partnership or to the partner at the chief executive office of the partnership.
 - b. In all other cases 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, if there is no one in charge, when left in a conspicuous place in the office or, if the office is closed or the person to be notified has no office, when left at the dwelling, house, or other usual place of abode of the person with some person of suitable age and discretion residing there.
 - c. Is given when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when it is given.
4. 9. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.
5. 10. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
6. 11. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.
7. 12. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
8. ~~"Person" includes any legal or commercial entity. The term includes governmental subdivision, agency, or instrumentality.~~
9. 13. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
14. "Signed" means the signature of a person is placed on a document, as provided in subsection 39 of section 41-01-11, and:

- a. With respect to a document required by this chapter to be filed with the secretary of state, means the document is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - b. With respect to a document not required by this chapter to be filed with the secretary of state, means the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.
40. 15. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
44. 16. "Statement" means a statement of partnership authority under section 45-15-03, a statement of denial under section 45-15-04, a statement of dissociation under section 45-19-04, a statement of dissolution under section 45-20-05, a statement of merger under section 45-21-07, or an amendment or cancellation of any of the foregoing.
42. 17. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 167. AMENDMENT. Subsection 2 of section 45-13-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. The partnership agreement may not:
 - a. Vary the rights and duties under section 45-13-05 except to eliminate the duty to provide copies of statements to all of the partners;
 - b. Unreasonably restrict the right of access to books and records under subsection 2 of section 45-16-03;
 - c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03, but:
 - (1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
 - (2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03;
 - e. Eliminate the obligation of good faith and fair dealing under subsection 4 of section 45-16-04, but the partnership agreement may

- prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- f. Vary the power to dissociate as a partner under subsection 1 of section 45-18-02, except to require the notice under subsection 1 of section 45-18-01 to be in writing;
 - g. Vary the right of a court to expel a partner in the events specified in subsection 5 of section 45-18-01;
 - h. Vary the requirement to wind up the partnership business in cases specified in subsection 4, 5, or 6 of section 45-20-01; ~~or~~
 - i. Vary the law applicable to a limited liability partnership under chapter 45-22; or
 - j. Restrict rights of third parties under chapters 45-13 through 45-21.

SECTION 168. Section 45-13-04.1 of the North Dakota Century Code is created and enacted as follows:

45-13-04.1. Partnership name.

1. A partnership name filed in a statement under section 45-13-05:
 - a. Must be in the English language or in any other language expressed in English letters or characters;
 - b. May not contain a word or phrase indicating or implying the partnership may not be organized under this chapter;
 - c. May not contain a word or phrase indicating or implying the partnership is organized for a purpose other than a legal business purpose for which a partnership may be organized under this chapter;
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; and
 - e. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a document which complies with subsection 3 of:
 - (a) Another partnership;
 - (b) A limited liability company;
 - (c) A corporation;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or

- (f) A limited liability limited partnership;
 - (2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
- 2. The secretary of state shall determine whether a partnership name is deceptively similar to another name for purposes of this chapter.
- 3. This subsection does not affect the right of a domestic partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name. If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, the partnership name may not be used unless there is filed with the statement:
 - a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
- 4. This section and section 45-13-04.2 do not:
 - a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; 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 other rights to the exclusive use of a name or symbol.
 - b. Derogate the common law or any principle of equity.
- 5. A partnership that is merged with another partnership or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited partnerships, or that acquires by sale, lease, or other disposition to or exchange with a partnership all or substantially all of the assets of another partnership or domestic or foreign limited partnership including the partnership's or limited partnership's name, may have the same name as that used in this state by any other partnership or domestic or foreign limited partnership if the other partnership or domestic or foreign limited partnership:
 - a. Is formed under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 45-10.1-03;

- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
- 6. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership's partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.
- 7. If a partnership's period of existence is expired or a partnership's statement filed under section 45-13-05 is expired, the partnership may reacquire the right to use that name by refileing a statement pursuant to section 45-13-05, unless the name was adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A partnership that cannot reacquire the use of the partnership's partnership name shall adopt a new partnership name that complies with this section.

SECTION 169. Section 45-13-04.2 of the North Dakota Century Code is created and enacted as follows:

45-13-04.2. Reserved name.

- 1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 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 45-13-05.
 - a. 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.
 - b. The reservation may be renewed for successive twelve-month periods.
- 3. The right to the exclusive use of a partnership 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 45-13-05.
- 4. The right to the exclusive use of a partnership 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 45-13-05.

5. The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.
6. The secretary of state may destroy any reserved name request and any index of reserved names one year after expiration.

SECTION 170. AMENDMENT. Section 45-13-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-05. (105) Execution, filing, and recording of statements.

1. A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in chapters 45-13 through 45-21 with respect to partnership property located in or transactions that occur in this state.
2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in chapters 45-13 through 45-21. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in chapters 45-13 through 45-21.
3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by chapters 45-13 through 45-21. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.
4. A person authorized by chapters 45-13 through 45-21 to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.
5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
6. ~~A partnership name filed in a statement under this section may not be the same as or deceptively similar to the name of any other partnership filed under this section or any corporation, limited liability company, or limited partnership, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the partnership statement a written consent of the holder of the similar name to use the name proposed by the partnership.~~
7. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership on a form furnished by the secretary of state which is sent to the address of the chief executive office at least sixty

days before the deadline for filing. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the address of the chief executive office.

8. 7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's chief executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the chief executive office of the partnership may serve as ~~such a~~ notice under this subsection.
9. 8. a. The secretary of state shall charge and collect a fee for:
- (1) Filing a statement under this section, one hundred dollars.
 - (2) Filing an amendment under this section, forty dollars.
 - (3) Filing a cancellation under this section, ~~twenty-four~~ twenty-five dollars.
 - (4) Filing a renewal under this section, forty dollars.
 - (5) Filing a request to reserve a partnership name, ten dollars.
 - (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
 - (7) Filing a cancellation of reserved partnership name, ten dollars.
 - (8) Filing a statement of conversion, fifty dollars.
 - (9) Filing a statement of merger, fifty dollars.
 - (10) Any document submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the document.
- b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

SECTION 171. AMENDMENT. Section 45-13-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-06. (106) Law governing internal relations.

1. The ~~Except as otherwise provided in subsection 2,~~ the law of the jurisdiction in which a partnership has ~~its~~ the partnership's chief

executive office governs relations among the partners and between the partners and the partnership.

2. The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

SECTION 172. AMENDMENT. Section 45-14-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-14-01. (201) Partnership as entity.

1. A partnership is an entity distinct from ~~its~~ the partnership's partners.
2. A limited liability partnership continues to be the same entity in existence before the filing of the registration under chapter 45-22.

SECTION 173. AMENDMENT. Subsection 1 of section 45-15-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A partnership may file a statement of partnership authority; which:
 - a. Must include:
 - (1) The name of the partnership;
 - (2) The street address of ~~its~~ the partnership's chief executive office and of one office in this state, if there is one;
 - (3) ~~The names~~ name and mailing ~~addresses~~ address of ~~all of the partners and of an agent appointed and maintained by the partnership~~ each partner;
 - (4) The address of the registered office of the partnership and the name of the registered agent at that address;
 - (5) ~~The names~~ name of the partners each partner authorized to execute an instrument transferring real property held in the name of the partnership; and
 - ~~(5)~~ (6) The nature of business to be transacted; ~~and~~.
- b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

SECTION 174. Section 45-15-03.1 of the North Dakota Century Code is created and enacted as follows:

45-15-03.1. Registered office - Registered agent.

1. A partnership that files and maintains a statement of partnership authority 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 chief executive office of the partnership.

2. A partnership that files a statement of partnership authority shall appoint and continuously maintain a registered agent who may be:
 - a. An individual residing in this state;
 - b. A domestic corporation;
 - c. A domestic limited liability company; or
 - d. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to the registered agent's registered office.
4. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-13-05.

SECTION 175. Section 45-15-03.2 of the North Dakota Century Code is created and enacted as follows:

45-15-03.2. Change of registered office or agent.

1. A partnership that files and maintains a statement of partnership authority may change the partnership's registered office, change the partnership's registered agent, or state a change in the name of the partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-13-05, a statement containing:
 - a. The name of the partnership;
 - b. If the address of the partnership's registered office is changing, the new address of the partnership's registered office;
 - c. If the partnership's registered agent is being designated or changing, the name of the partnership's new registered agent;
 - d. If the name of the partnership's registered agent is changing, the name of the partnership's registered agent as changed;
 - e. A statement that the address of the partnership's registered office and the address of the business office of the partnership's 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 partners.
2. A registered agent of a partnership 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 was given to the partnership at the partnership's chief executive office, or to a legal representative of the partnership. The appointment of the agent terminates thirty days after 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 partnership represented by that agent by filing with the secretary of state a statement for each partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those partnerships or to the legal representative of each of those partnerships.

SECTION 176. AMENDMENT. Subsection 1 of section 45-15-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2 and in chapter 45-22, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

SECTION 177. AMENDMENT. Section 45-22-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Domestic limited liability partnership" means a ~~general~~ partnership that is organized under the laws of this state with a registration ~~or a renewal registration~~ in effect and which is not a foreign limited liability partnership.
3. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
 - a. That ~~either~~:
 - (1) ~~A~~ a signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or
 - (2) ~~A~~ a signed original of all other documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, ~~has been~~ was delivered to the secretary of state and ~~has been~~ was determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then:
 - (1) Endorse on the original the word "filed" and the month, day, and year; and

- (2) Record the document in the office of the secretary of state.
4. "Foreign limited liability partnership" means a partnership organized as a limited liability partnership:
- a. ~~Which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability partnership may be organized under this chapter;~~
 - b. ~~With a registration or renewal registration in effect; and~~
 - e. ~~In which is in good standing in its~~ the partnership's jurisdiction of origin.
5. ~~"General partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under North Dakota law, predecessor law, or comparable law of another jurisdiction.~~
6. ~~"Jurisdiction of origin" refers to~~ means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.
7. 6. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.
8. 7. "Managing partner" means one of the partners charged with the management in this state of the limited liability partnership or foreign limited liability partnership and if no partners are so specifically designated, then all partners.
9. 8. "Notice":
- a. Is given to a limited liability partnership or to a partner of the limited liability partnership when in writing and mailed or delivered to the limited liability partnership or the partner at the registered office or principal executive office of the limited liability partnership; ~~and~~.
 - b. In all other cases, is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the ~~last known~~ last-known address of the person; or
 - (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 then residing therein.

- c. Is given when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when ~~it is~~ given.
40. 9. "Originally registered" and "original registration" ~~refers to~~ means the document establishing the limited liability partnership status of the foreign limited liability partnership in ~~its~~ the foreign limited liability partnership's jurisdiction of origin.
10. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.
11. "Principal executive office" means:
- a. An office from which the limited liability partnership conducts business; or
 - b. If the limited liability partnership has no office from which ~~it~~ the limited liability partnership conducts business, ~~then~~ the registered office of the limited liability partnership.
12. "Register" means the act of filing with the secretary of state which causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to transact business in this state.
13. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
14. "Registration" means the document which, when filed with the secretary of state, causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to do business in this state.
15. "~~Renewal registration~~" ~~means the document by which the status of a domestic limited liability partnership or a foreign limited liability partnership is extended for an additional one-year period.~~
46. "Signed" means ~~that~~ the signature of a person ~~has been~~ is placed on a document, as provided in subsection 39 of section 41-01-11~~;~~.
- a. With respect to a document required by this chapter to be filed with the secretary of state, the term means ~~that~~ the document ~~has been~~ is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; ~~and.~~

- b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the document.

SECTION 178. AMENDMENT. Section 45-22-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-03. Registration.

1. A partnership may become a limited liability partnership pursuant to this section.
 - a. 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 45-14-02 apply.
 - b. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the necessary vote of partners required to amend the partnership agreement, unless the partnership agreement contains a requirement that the vote of a greater number of partners is necessary to amend provisions relating to the partners' obligations to contribute to the partnership, in which case by the necessary vote of the partners to amend these provisions.
2. After the approval required by subdivision b of subsection 1, a partnership shall become a limited liability partnership by filing a registration with the secretary of state. A domestic limited liability partnership or foreign limited liability partnership that is transacting business in this state must have in effect and filed with the secretary of state a registration that complies with this section.
 - a. ~~For one year from its~~ From the effective date of filing, the registration of:
 - (1) a. A domestic limited liability partnership establishes ~~its~~ the status as a domestic limited liability partnership; and
 - (2) b. A foreign limited liability partnership authorizes ~~it to transact the~~ transaction of business in this state.

Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.
 - b. ~~The limited liability partnership or foreign limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.~~
 - (1) A registration may be renewed for successive ~~one-year periods.~~

- ~~(2)~~ A proper renewal registration extends the registration of a limited liability partnership or foreign limited liability partnership for another one-year period, measured from the end of the previous one-year period.
 - ~~(3)~~ Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to revocation by the secretary of state as provided in section ~~45-22-16~~.
3. A registration ~~or renewal registration~~ must contain:
- a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) The nature of the business to be transacted in this state.
 - (3) The address of the principal executive office of the domestic limited liability partnership.
 - (4) The address of the registered office of the domestic limited liability partnership and the name of ~~its~~ the registered agent at that address.
 - (5) The name and address of each managing partner.
 - (6) ~~An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.~~ A statement that the partnership elects to be a limited liability partnership.
 - (7) ~~An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.~~ A deferred effective date, if any.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership and, if different, the name under which ~~it~~ the foreign limited liability partnership proposes to transact business in this state.
 - (2) The jurisdiction of ~~its original registration~~ origin.
 - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of ~~its~~ origin.
 - (4) The nature of the business to be transacted in this state.
 - (5) The address of the principal executive office of the foreign limited liability partnership.

- (6) The address of the registered office of the foreign limited liability partnership and the name of ~~its~~ the foreign limited liability partnership's registered agent at that address.
- (7) The name and address of each managing partner.
- (8) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire:
- (a) ~~Unless the foreign limited liability partnership files a proper renewal registration; and~~
- (b) ~~Unless~~ unless the foreign limited liability partnership continuously maintains ~~its~~ limited liability partnership status in ~~its~~ the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.
4. An original of the registration ~~or renewal registration~~ must be filed with the secretary of state.
- a. If the secretary of state finds ~~that~~ the registration ~~or renewal registration~~ conforms to law and ~~that~~ the fees provided in section 45-22-22 ~~have been~~ are paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.
- b. If any statement in the registration ~~or renewal registration~~ was is false when made or becomes inaccurate after the registration ~~or renewal registration~~ is filed, making the registration ~~or renewal registration~~ false or inaccurate in any respect:
- (1) ~~The~~ the limited liability partnership ~~or foreign limited liability partnership~~ shall file promptly with the secretary of state an amended or corrected registration ~~or renewal registration~~ or reflect the changes on ~~its~~ the limited liability partnership's next ~~renewal registration; and~~ annual report.
- (2) ~~With respect to foreign limited liability partnerships:~~
- (a) ~~c.~~ c. In the case of a change in ~~its~~ a foreign limited liability partnership's name, a foreign limited liability partnership shall file promptly with the secretary of state a certificate to that effect authenticated by the proper officer of the ~~state or country under the laws of which the foreign limited liability partnership is originally registered; or jurisdiction of origin.~~
- (b) ~~d.~~ d. In the case of a termination or merger:
- [4] (1) A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within

thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered partnership's jurisdiction of origin.

- [2] (2) It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure either a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to pursue in this state purposes other than those which ~~it~~ the foreign limited liability partnership is authorized to transact in this state.

e. ~~With respect to renewals:~~

- (1) ~~A renewal registration received by the secretary of state in a sealed envelope postmarked by the United States postal service on or before the lapse, or a renewal registration in a sealed packet with a verified shipment date by any other carrier service on or before the lapse, and properly addressed to the secretary of state is deemed to be in compliance with the requirement for timely delivery. When a lapse falls on a Saturday, Sunday, or other holiday as defined in section 4-03-01, a postmark or verified shipment date on the next business day is in compliance with this requirement.~~
- (2) ~~The secretary of state must file the renewal registration if the renewal registration conforms to the requirements of this section.~~
- (3) ~~If the renewal registration does not conform, the registration must be returned to the limited liability partnership or foreign limited liability partnership for any necessary corrections. If the corrected renewal registration is filed after the lapse date, but within thirty days after it is returned for correction, the penalties for failure to file the renewal registration within the time required do not apply.~~
- (4) ~~Each limited liability partnership or foreign limited liability partnership that fails or refuses to file its renewal registration on or before the lapse date of a registration must pay an additional late renewal fee as provided in section 45-22-22.~~

e. e. The secretary of state may destroy any registrations and renewal registrations which have been registration that is on file for seven years.

5. A managing partner must be separately registered with the secretary of state at the time of the registration of a domestic limited liability partnership ~~whenever~~ if that managing partner is either a domestic or foreign:

a. Corporation;

- b. Limited liability company;
 - c. Limited partnership;
 - d. Limited liability partnership; ~~or~~
 - e. Limited liability limited partnership; or
 - f. ~~General partnership~~ Partnership using a fictitious name.
6. With respect to a domestic limited liability partnership:
 - a. A ~~general~~ partnership's decision to file a registration is an ordinary matter that may be decided by a majority of the partners.
 - b. The decision to withdraw ~~or not renew~~ a registration may be undertaken only with the consent of all ~~of the~~ partners or as otherwise expressly provided in a written partnership agreement.
 7. A ~~general~~ partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.
 8. If a limited liability partnership or foreign limited liability partnership dissolves without winding up ~~its~~ business or changes ~~its~~ the jurisdiction of origin, a partnership ~~which~~ that is a successor to ~~such~~ the limited liability partnership or foreign limited liability partnership and which intends to be a limited liability partnership or foreign limited liability partnership ~~shall~~ is not be required to file a new registration or renewal and ~~shall be~~ is deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.
 9. The status of a partnership as a limited liability partnership is effective on the later of the filing of the registration or a date specified in the registration which is within ninety days after the filing of the registration.
 - a. The status of a partnership as a domestic limited liability partnership and the authority of a foreign limited liability partnership to transact business in this state remains effective, regardless of changes in the partnership, until the partnership's registration is voluntarily withdrawn pursuant to section 45-22-13 or revoked by the secretary of state pursuant to sections 45-22-16 and 45-22-21.1.
 - b. The status of a partnership as a limited liability partnership and the liability of the partnership's partners for obligation of the partnership is not affected by errors or later changes in the information required to be contained in the registration under subsection 3.

SECTION 179. AMENDMENT. Section 45-22-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

1. The name of a limited liability partnership:

- a. Must be in the English language or in any other language, expressed in English letters or characters.
- b. Must contain ~~the~~:
 - (1) The words "limited liability partnership" or ~~either~~ the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations ~~can~~ may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state; or
 - (2) In the case of a foreign limited liability partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of ~~original registration~~ origin.
- c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the limited liability partnership may not be formed under this chapter.
- d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
- e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the limited liability partnership is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.
- e- f. May not be the same as; or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state; or domestic, unless there is filed with the registration a document ~~which~~ that complies with subsection ~~2~~ 3 of this section, ~~or~~ of:
 - (a) Another limited liability partnership;
 - (b) A corporation;
 - (c) A limited liability company; ~~or~~
 - (d) A limited partnership; or
 - (e) A limited liability limited partnership;
 - (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.

- f. ~~g.~~ Need not be filed as provided in chapter 45-11 except ~~when~~ if transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is deceptively similar to another name for purposes of this section.
 3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, ~~then~~ the limited liability partnership name may not be used unless there is filed with the registration:
 - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the ~~prior~~ earlier right of the applicant to the use of the name in this state.
 4. This section and section 45-22-05 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, and service marks; or
 - (4) Any other rights to the exclusive use of names or symbols.
 - b. Derogate the common law or principles of equity.
 5. A limited liability partnership that is merged with ~~another~~ a domestic or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including ~~its~~ the organization's name, may have the same name as that used in this state by any of the other organizations, if the other organization:
 - a. ~~Was~~ is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

- e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate ~~its~~ the limited liability partnership's status as a limited liability partnership existence. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though ~~its~~ the limited liability partnership's registration may have been filed with the secretary of state.
7. With respect to foreign limited liability partnerships:
 - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether or not the name is the same under which ~~it~~ the foreign limited liability partnership is authorized in ~~its~~ the jurisdiction of original registration.
 - b. A fictitious name certificate must be filed as provided in chapter 45-11 only ~~when~~ if registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 180. AMENDMENT. Section 45-22-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership ~~or foreign limited liability partnership~~ name otherwise permitted by section 45-22-04 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 45-22-22.
 - a. 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.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability partnership ~~or foreign limited liability partnership~~ 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 45-22-22.
4. The right to the exclusive use of a limited liability partnership ~~or foreign limited liability partnership~~ 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 section 45-22-22.

5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name.
6. The secretary of state may destroy ~~all~~ any reserved name ~~requests~~ request and name request index ~~thereof~~ one year after expiration.

SECTION 181. AMENDMENT. Section 45-22-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and with intent to defraud does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, ~~then~~ that person is personally liable on the contract or undertaking, unless that person can show in making the contract or accepting the undertaking that the other party had knowledge or notice that the partnership was a limited liability partnership, or did not rely on the partnership being an ordinary ~~general~~ partnership. Any partner of a limited liability partnership who with intent to defraud consents to a person not making the disclosure described in this section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

SECTION 182. AMENDMENT. Section 45-22-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership knowing that ~~no~~ a registration ~~or renewal registration~~ is not in effect is jointly and severally liable for all debts and liabilities incurred or arising as a result.

SECTION 183. Section 45-22-08.1 of the North Dakota Century Code is created and enacted as follows:

45-22-08.1. Partner liability.

1. An obligation of a partnership incurred while the partnership is a domestic limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the domestic limited liability partnership.
2. A partner is not personally liable, directly or indirectly, including by way of indemnification, contribution, or otherwise under section 45-19-03, 45-20-06, 45-20-07, 45-21-03, or 45-21-06 or any other basis of law, for an obligation under this section solely by reason of being a partner or acting as a partner.
3. This section applies notwithstanding any inconsistent provision in the partnership agreement.
4. This section does not limit or impair the right of a domestic limited liability partnership or the domestic limited liability partnership's partners to make claims against any particular partner on the grounds that the particular partner has, in the partner's capacity as a partner, breached a duty to a domestic limited liability partnership.

SECTION 184. AMENDMENT. Section 45-22-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-10. Liability of partners for illegal distributions. With respect to the liability of partners for illegal distributions:

1. ~~A~~ Except as provided in subsection 3, a partner who receives a distribution from a domestic limited liability partnership that which would have been in violation of section 10-19.1-92 had the limited liability partnership been a corporation with a board of directors is liable to the domestic limited liability partnership, its the domestic limited liability partnership's receiver, or other person winding up its the domestic limited liability partnership's affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.
3. A partner actively engaged in the partnership business is not liable to the domestic limited liability partnership for any distribution that is or was regularly paid to the partner on account of engagement in the partnership business to the extent the distribution is reasonable compensation for the partner's services to or on behalf of the partnership.

SECTION 185. AMENDMENT. Section 45-22-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-11. Registered office and agent.

1. A limited liability partnership ~~or foreign limited liability partnership~~ 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 partnership ~~or foreign limited liability partnership~~.
2. A limited liability partnership ~~or foreign limited liability partnership~~ shall appoint and continuously maintain a registered agent in ~~its~~ the registration who may be:
 - a. An individual residing in this state;
 - b. A domestic corporation, a domestic limited liability company, or a domestic limited liability partnership; or
 - c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
3. Proof of the registered agent's consent to serve in ~~that~~ the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-22-22.

SECTION 186. AMENDMENT. Section 45-22-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-12. Change of registered office or agent.

1. A limited liability partnership ~~or foreign limited liability partnership~~ may change ~~its~~ the limited liability partnership's registered office, change ~~its~~ the limited liability partnership's registered agent, or state a change in the name of ~~its~~ the limited liability partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
 - a. The name of the limited liability partnership ~~or foreign limited liability partnership~~.
 - b. If the address of ~~its~~ the limited liability partnership's registered office is ~~to be changed~~ changing, the new address of ~~its~~ the limited liability partnership's registered office.
 - c. If ~~its~~ the limited liability partnership's registered agent is to be designated or ~~changed~~ is changing, the name of ~~its~~ the limited liability partnership's new registered agent.
 - d. If the name of ~~its~~ the limited liability partnership's registered agent is ~~to be changed~~ changing, the name of ~~its~~ the limited liability partnership's registered agent as changed.
 - e. A statement that the address of ~~its~~ the limited liability partnership's registered office and the address of the business office of ~~its~~ the limited liability partnership's registered agent, as changed, will be identical.
 - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.
2. A registered agent may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice ~~has been~~ was given to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~ the limited liability partnership's principal executive office, or to a legal representative of the limited liability partnership ~~or foreign limited liability partnership~~. 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 name of the registered agent of each limited liability partnership ~~or foreign limited liability partnership~~ represented by that agent by filing with the secretary of state a statement for each limited liability partnership ~~or foreign limited liability partnership~~ as required in subsection 1, except ~~that it~~ the statement 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~~ was mailed to each of those limited liability partnerships ~~or foreign limited liability partnerships~~ or to the legal representative of each of those limited liability partnerships ~~or foreign limited liability partnerships~~.
4. The fee prescribed in section 45-22-22 for the change of registered office must be refunded ~~when~~ if, in the opinion of the secretary of state, the

change of address of registered office results from rezoning or postal reassignment.

SECTION 187. AMENDMENT. Section 45-22-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-13. Voluntary withdrawal of status.

1. A partnership may end ~~its~~ the partnership's status as a limited liability partnership ~~or foreign limited liability partnership~~ at any time by filing a withdrawal statement with the secretary of state.
2. The withdrawal statement must contain:
 - a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) A statement that the domestic limited liability partnership is withdrawing ~~its~~ the current registration.
 - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends ~~its~~ the domestic limited liability partnership's status as a limited liability partnership status with respect to periods after the effective date of the withdrawal.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership.
 - (2) The jurisdiction of origin.
 - (3) A statement that the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.
 - (4) A statement that the foreign limited liability partnership surrenders ~~its~~ authority to transact business in this state as a foreign limited liability partnership and is withdrawing ~~its~~ the foreign limited liability partnership's current registration.
 - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends ~~its~~ the foreign limited liability partnership's authorization to transact business in this state as a foreign limited liability partnership status in this state with respect to periods after the effective date of the withdrawal.
 - (6) A statement that the foreign limited liability partnership revokes the authority of ~~its~~ the foreign limited liability partnership's registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact

business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.

- (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.
3. The withdrawal statement may state a delayed withdrawal date, ~~if that date is before the expiration date of the current registration.~~ If the withdrawal statement does not state an effective date, ~~then~~ the statement is effective when filed.
4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, ~~then~~ the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

SECTION 188. AMENDMENT. Section 45-22-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership ~~or a foreign limited liability partnership~~ that is winding up ~~its~~ the limited liability partnership's affairs may continue ~~its~~ the limited liability partnership's status as a limited liability partnership ~~or foreign limited liability partnership~~ through termination ~~either~~ by:
 - a. ~~Continuing continuing~~ to file an annual renewal registrations report until termination; ~~or.~~
 - b. ~~Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:~~
 - (1) ~~States the partnership is dissolved and is winding up its affairs.~~
 - (2) ~~Identifies the cause of the dissolution.~~
 - (3) ~~States the renewal registration is the final renewal registration and will remain in effect until termination.~~
2. ~~A final renewal registration that complies with subdivision b of subsection 4 must not contain the statement required in:~~
 - a. ~~Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or~~
 - b. ~~Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.~~
3. ~~When the dissolved limited liability partnership or foreign limited liability partnership has wound winds up its affairs, it the limited liability partnership shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:~~

a. Contain:

- (1) The name of the limited liability partnership ~~or foreign limited liability partnership~~.
- (2) A statement the limited liability partnership ~~or foreign limited liability partnership~~ has dissolved and wound up its affairs.
- (3) A statement the limited liability partnership ~~or foreign limited liability partnership~~ is terminated.

b. Be signed by one former managing partner who ~~has~~ did not wrongfully ~~dissolved~~ dissolve the partnership or, in the case of a foreign limited liability partnership, by a ~~managing~~ an authorized partner.

SECTION 189. AMENDMENT. Section 45-22-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-15. Limited liability after dissolution. With respect to limited liability after dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections 45-22-08 and 45-22-09 continues in full force for the dissolved domestic limited liability partnership regardless of any dissolution, winding up, and termination.
2. If a domestic limited liability partnership dissolves and ~~its~~ the domestic limited liability partnership's business is continued by a successor ~~general~~ partnership under section 45-20-02, ~~then~~ the limited liability described in ~~sections~~ section 45-22-08 and ~~45-22-09~~ also applies to that successor domestic limited liability partnership until the ~~expiration~~ withdrawal of the registration that the dissolved domestic limited liability partnership had in effect under section 45-22-03 at the moment of dissolution. The successor ~~general~~ partnership may at any time file ~~its~~ the partnership's own registration under section 45-22-03.

SECTION 190. AMENDMENT. Section 45-22-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-16. Revocation of registration.

1. The registration of a limited liability partnership ~~or foreign limited liability partnership~~ may be revoked by the secretary of state upon the occurrence of any of these events:
 - a. The limited liability partnership ~~or foreign limited liability partnership~~ ~~has failed~~ fails:
 - (1) To appoint and maintain a registered agent as required by this chapter;
 - (2) To file a report upon any change in the name or business address of the registered agent; or

SECTION 191. AMENDMENT. Section 45-22-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-17. Service of process on a limited liability partnership ~~or foreign limited liability partnership~~.

1. A process, notice, or demand required or permitted by law to be served on a limited liability partnership ~~or foreign limited liability partnership~~ may be served ~~either~~ on the registered agent or on any responsible person found at the registered office or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership ~~or foreign limited liability partnership~~ cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership ~~or foreign limited liability partnership~~ on whom the process, notice, or demand may be served.
 - a. The return of the sheriff, or affidavit of a person not a party, that ~~no~~ a registered agent or responsible person ~~may~~ cannot be found at ~~either~~ the registered office or at the principal place of business in this state is conclusive evidence ~~that~~ the limited liability partnership ~~or foreign limited liability partnership~~ has no registered agent or responsible person at ~~its~~ the limited liability partnership's registered office or at ~~its~~ the limited liability partnership's principal place of business in this state.
 - b. Service on the secretary of state of any process, notice, or demand is deemed personal service on the limited liability partnership ~~or foreign limited liability partnership~~ and may be made by filing with the secretary of state one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.
 - c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~ the limited liability partnership's registered office or ~~at its~~ principal place of business in this state, a copy of the process, notice, or demand.
 - d. 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.
3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to ~~it~~ the process, notice, or demand.
4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership ~~or foreign limited liability partnership~~ in any other manner permitted by law.

SECTION 192. AMENDMENT. Section 45-22-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-18. Foreign limited liability partnership governing law.

1. ~~The laws of the foreign limited liability partnership's jurisdiction under which a foreign limited liability partnership is originally registered of origin govern its organization, internal affairs, and the liability of partners for the debts, obligations, and liabilities of or chargeable to the partnership or another partner or partners.:~~
 - a. ~~The relations among the partners of a foreign limited liability partnership, or the relations between any partner or partners of a foreign limited liability partnership and the foreign limited liability partnership; and~~
 - b. ~~The liability of partners for obligations of a foreign limited liability partnership.~~
2. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between ~~these~~ the laws of the foreign limited liability partnership's jurisdiction of origin and the laws of this state.
3. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to engage in any business or exercise any of its powers for purposes power that a domestic limited liability partnership is ~~forbidden by law to exercise in this state~~ may not engage in or exercise as a limited liability partnership.

SECTION 193. AMENDMENT. Section 45-22-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership ~~has registered~~ registers with the secretary of state.
2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.
3. A limitation on the personal liability of a partner is not waived solely by the foreign limited liability partnership transacting business in this state without having filed a registration with the secretary of state.
4. A foreign limited liability partnership, by transacting business in this state without ~~having registered~~ registering with the secretary of state, appoints the secretary of state as ~~its~~ the agent upon whom any notice, process, or demand may be served.

SECTION 194. Section 45-22-20.1 of the North Dakota Century Code is created and enacted as follows:

45-22-20.1. Foreign limited liability partnership - Transaction of business without registering.

1. A foreign limited liability partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited liability partnership registers with the secretary of state.
2. The failure of a foreign limited liability partnership to register does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim, action, suit, or proceeding in any court in this state.
3. A foreign limited liability partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited liability partnership's agent upon whom any notice, process, or demand may be served.
4. A foreign limited liability partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited liability partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited liability partnership had the foreign limited liability partnership duly registered, 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 this section.
5. A foreign limited liability partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each managing partner or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability partnership that has not registered 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 partnership or any of the foreign limited liability partnership's managing partners 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 partnership and further exercise of any rights and privileges by the foreign limited liability partnership in this state. The foreign limited liability partnership 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 partnership has otherwise complied with the provisions of this chapter.

SECTION 195. AMENDMENT. Subsection 1 of section 45-22-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following activities of a foreign limited liability partnership, 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~~ partners 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 partnership's own partnership interests or maintaining trustees or depositories with respect to those partnership interests.
 - 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~~ the orders become contracts.
 - g. Creating or acquiring indebtedness, ~~mortgages~~ with or without a mortgage, and or other security interests in real or personal property.
 - h. ~~Securing or collecting~~ Collecting debts or enforcing, including foreclosing mortgages; and security interests in property securing the debts canceling contracts for deed; enforcing other security interests on property; securing debts; accepting deeds or other instruments of title from debtors in lieu of foreclosure; canceling or other enforcement; and holding, protecting, and maintaining property acquired under this subdivision.
 - 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.
 - ~~k.~~ j. 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.
 - k. Transacting business in interstate commerce.

SECTION 196. Section 45-22-21.1 of the North Dakota Century Code is created and enacted as follows:

45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.

1. Each domestic limited liability partnership and each foreign limited liability partnership 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 partnership and the jurisdiction of origin.
 - b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
 - c. The address of the limited liability partnership's chief executive office.
 - d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
 - e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.
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 16 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

 - a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.
 - b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.

 - (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
 - (2) If the annual 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 the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and the limited liability partnership may be revoked pursuant to subsection 5.

 - a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.
 - b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.
5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.

 - a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.
 - b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.
6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.

 - a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
 - b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office of record.
 - c. The secretary of state's decision that a registration must be revoked under this subsection is final.
7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are forfeited by failure to file an annual report may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report

and a reinstatement fee as prescribed in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

SECTION 197. AMENDMENT. Section 45-22-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Fees and charges.

1. The secretary of state shall charge and collect for:
 - a. Filing a registration as a domestic limited liability partnership, twenty-five dollars. ~~When~~ If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
 - b. Filing a ~~renewal~~ registration as a foreign limited liability partnership, ~~twenty-five~~ fifty dollars.
 - c. ~~Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.~~ Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - (1) After the date prescribed in subsection 3 of section 45-22-21.1, twenty dollars; and
 - (2) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.
 - d. Filing a statement of correction; or amended registration, twenty-five dollars.
 - e. Filing an application to reserve a name, ten dollars.
 - f. Filing a notice of transfer of a reserved name, ten dollars.
 - g. Filing a cancellation of reserved name, ten dollars.
 - h. Filing a consent to use of name, ten dollars.
 - i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.
 - j. Filing a statement of change of address of registered office by registered agent, ten dollars for each domestic limited liability partnership or foreign limited liability partnership affected by ~~such~~ the change.

- k. Filing a registered agent's consent to serve in ~~such~~ the capacity of registered agent, ten dollars.
 - l. Filing a resignation as registered agent, ten dollars.
 - m. Filing a notice of withdrawal, ten dollars.
 - n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
 - o. Filing any other statement of a domestic limited liability partnership, ten dollars.
 - p. Filing any process, notice, or demand for service, twenty-five dollars.
 - q. ~~Filing a registration as a foreign limited liability partnership, fifty dollars.~~ Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
2. The secretary of state shall charge and collect for:
 - a. Furnishing a copy of any document, instrument, or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction ~~thereof~~ of pages.
 - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, twenty dollars.
 - c. Each page of any document or form sent by electronic transmission, one dollar.

SECTION 198. AMENDMENT. Section 45-22-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-23. Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited liability partnership ~~or foreign limited liability partnership~~ subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
 - a. Any interrogatory must be answered within thirty days after mailing; or within any additional time fixed by the secretary of state. ~~The answers~~ Every answer to the interrogatory must be full and complete and be made in writing and under oath.
 - b. If an interrogatory is directed:

- (1) To an individual, ~~it~~ the interrogatory must be answered by that individual; ~~or~~
 - (2) To a domestic limited liability partnership ~~or foreign limited liability partnership~~, it the interrogatory must be answered by a managing partner; ~~or~~
 - (3) To a foreign limited liability partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited liability partnership.
 - c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory ~~has been~~ is answered, ~~and not then~~ except if the answers disclose ~~that such~~ the document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers ~~which~~ that disclose a violation of this chapter.
 - e. Each managing partner of a domestic limited liability partnership or a resident partner or designated partner of a foreign limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any ~~facts~~ fact or information obtained from an interrogatory except insofar as may be to the extent permitted by law or insofar as is required for evidence in any criminal proceedings proceeding 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 document may be filed, the secretary of state, ~~within ten days after receipt of the document~~, shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the domestic limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated by filing with the clerk of ~~such~~ that 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. The court shall try the matter de novo. The court shall ~~either~~ sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
 4. If the secretary of state revokes the registration of any foreign limited liability partnership pursuant to section 45-22-16, the foreign limited liability partnership may appeal to district court of the county where the registered office of the foreign limited liability partnership in this state is situated by filing with the clerk of ~~such~~ that court a petition setting forth a copy of ~~its~~ the foreign limited liability partnership's registration and a

copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall ~~either~~ sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

5. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

SECTION 199. AMENDMENT. Subsection 2 of section 45-22-24 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 domestic limited liability partnerships or foreign limited liability partnerships 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.

SECTION 200. AMENDMENT. Section 45-22-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-25. Forms to be furnished by the secretary of state. ~~All renewal registrations~~ Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 201. AMENDMENT. Section 45-22-26 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability partnership ~~or foreign limited liability partnership~~ 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 partnership ~~or foreign limited liability partnership~~, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited liability partnership ~~or foreign limited liability partnership~~. 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 partnership ~~or foreign limited liability partnership~~ required to submit an annual report under this section.

SECTION 202. AMENDMENT. Subdivision b of subsection 1 of section 45-22-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. "Private limited liability partnership" means a domestic limited liability partnership or foreign limited liability partnership, 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.

SECTION 203. Chapter 45-23 of the North Dakota Century Code is created and enacted as follows:

45-23-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address.
2. "Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.
3. "Filed with the secretary of state", except as otherwise permitted by law or rule, means:
 - a. That a signed original or legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all of the documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered to the secretary of state and was determined by the secretary of state to conform to law.
 - b. That 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.
4. "Foreign limited liability limited partnership" means a limited liability limited partnership that is:
 - a. Organized under the laws other than the laws of this state for a purpose or purposes for which a limited liability limited partnership may be organized under this chapter; and
 - b. In good standing in the jurisdiction of origin.
5. "Foreign limited partnership" means a limited partnership that is:
 - a. Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter 45-10.1; and
 - b. Authorized to transact business in this state as provided in chapter 45-10.1.
6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was created.

7. "Limited liability limited partnership" means a domestic limited liability limited partnership.
8. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
9. "Notice":
 - a. Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership when in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; and
 - b. In all other cases, 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 if there is no one in charge, when left in a conspicuous place in the office and if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing in that house or abode.
 - c. Is given when deposited in the United States mail with sufficient postage affixed.
 - d. Is deemed received when given.
10. "Principal executive office" means:
 - a. An office from which the limited liability limited partnership conducts business; or
 - b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.
11. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.
12. "Signed" means the signature of a person is placed on a document, as provided in section 41-01-11.
 - a. With respect to a document required by this chapter to be filed with the secretary of state, means the document is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

- b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

45-23-02. Applicability of chapter 45-10.1.

1. In any case not provided for in this chapter, chapter 45-10.1 governs.
2. If applying chapter 45-10.1 to a limited liability limited partnership:
 - a. All references in chapter 45-10.1 to "limited partnership" refer to "limited liability limited partnership"; and
 - b. All references in chapter 45-10.1 to "foreign limited partnership" refer to "foreign limited liability limited partnership".
3. If any provision of this chapter conflicts with chapter 45-10.1, that provision of this chapter takes precedence.

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
 - a. Must be in the English language or in another language expressed in English letters or characters.
 - b. Must contain:
 - (1) Without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state; or
 - (2) In the case of a foreign limited liability limited partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.
 - c. May not contain the name of a limited partner unless:
 - (1) The name is also the name of a general partner; or
 - (2) The business of the limited liability limited partnership was carried on under that name before the admission of that limited partner.
 - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.

- e. May not contain a word or phrase indicating or implying the limited liability limited partnership may not be organized under this chapter.
 - f. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized for a purpose other than a legal business purpose for which a limited liability limited partnership may be organized under this chapter.
 - g. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized other than for a purpose stated in the certificate of the limited liability limited partnership.
 - h. May not be the same as, or deceptively similar to:
 - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a document in compliance with subsection 3, of:
 - (a) Another limited liability limited partnership;
 - (b) A limited partnership;
 - (c) A corporation;
 - (d) A limited liability company; or
 - (e) A limited liability partnership;
 - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
 - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
 - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.

4. This section does not abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; 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 other rights to the exclusive use of any name or symbol. This section does not derogate the common law or the principles of equity.
5. A limited liability limited partnership that is merged with another domestic or foreign organization, that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization, including the organization's name, may include in the limited liability limited partnership's name the name of any of the other organizations, if the other organization:
 - a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.

45-23-04. Limited liability limited partnership formation.

1. If a limited partnership does not exist, a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:
 - a. That complies with the name requirements in section 45-23-03;
 - b. That contains a statement that limited liability limited partnership status is elected; and
 - c. That otherwise conforms to the requirements of section 45-10.1-08.
2. An existing limited partnership:
 - a. May elect to become a limited liability limited partnership:

- (1) By obtaining approval to be governed by this chapter by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;
 - (2) By complying with the name requirements of section 45-23-03; and
 - (3) By filing with the secretary of state, together with the fees provided in sections 45-10.1-15 and 45-23-08, a document that is designated as both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:
 - (a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;
 - (b) Contains a statement that limited liability limited partnership status is elected; and
 - (c) Otherwise conforms to the requirements of section 45-10.1-09.
- b. Continues to be the same entity in existence before the filing with the secretary of state pursuant to this section.

45-23-05. Effective date of formation or election under this chapter. With respect to the date on which a limited liability limited partnership is formed or on which a limited partnership elects to be governed by this chapter:

1. If a limited partnership does not exist, a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.
2. An existing limited partnership electing to become a limited liability limited partnership is governed by this chapter on the later of the filing of the document designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that document which is within ninety days after the filing of the document.

45-23-06. General partner liability. An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner. This section applies notwithstanding anything inconsistent in the partnership agreement.

45-23-07. Foreign limited partnership - Adopting limited liability limited partnership status. An existing foreign limited partnership authorized to transact business in this state pursuant to section 45-10.1-52 which subsequently adopts and maintains limited liability limited partnership status in the jurisdiction of origin shall

file with the secretary of state, together with the fees required in sections 45-10.1-15 and 45-23-08:

1. A document designated as both an amended foreign limited partnership registration as required by section 45-10.1-55 and a foreign limited liability limited partnership registration as required by section 45-10.1-52; and
2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin.

45-23-08. Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred dollars.
2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
4. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of limited liability limited partnership name, ten dollars.
6. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
7. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
8. Filing a consent to use of a deceptively similar name, ten dollars.
9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability limited partnership affected by the change.
11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited liability limited partnership, one hundred dollars.
14. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.

15. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
16. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
17. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
18. Filing an annual report of limited liability limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
 - a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars; and
 - b. After the termination of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
19. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

SECTION 204. AMENDMENT. Subsection 6 of section 47-22-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Consists of or comprises a trademark ~~which so that~~ resembles a trademark registered in this state or a trade name, corporate name, limited liability company name, limited liability partnership name, limited partnership name, limited liability limited partnership name, or fictitious name registered with the office of the secretary of state, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

SECTION 205. AMENDMENT. Section 47-25-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. ~~No~~ A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, or a name of any domestic or foreign limited partnership authorized to do business in this state name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

SECTION 206. AMENDMENT. Section 61-13-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-13-03.1. Articles of organization or ~~operating agreement~~ bylaws 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~~ the articles of organization or ~~operating agreement~~ bylaws that water ~~shall~~ must be sold, distributed, supplied, or delivered only to owners of ~~its~~ the limited liability company's membership interests and that ~~such~~ these membership interests ~~shall~~ must be appurtenant to the land described in the document evidencing ~~such~~ these membership interests. ~~When~~ If a copy of ~~such~~ the articles of organization or ~~operating agreement~~ bylaws is recorded in the office of the register of deeds of the county in which ~~such~~ the lands are situated, ~~such~~ the membership interests ~~shall~~ become appurtenant to ~~said~~ the lands and ~~shall~~ may be transferred only with the sale or transfer of ~~such~~ the lands, except in the event of sale or forfeiture of ~~such~~ the membership interests for delinquent assessments ~~thereon~~ on the land as provided in section 61-13-04. Notwithstanding ~~such~~ any provision in ~~its~~ the limited liability company's articles of organization or ~~operating agreement~~ bylaws, any limited liability company organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency ~~thereof~~ of this state, and to the United States, or any department or agency ~~thereof~~ of the United States, at the same rates as to holders of membership interests of ~~such~~ the limited liability company. ~~In the event~~ If lands to which any ~~such~~ membership interest is appurtenant are acquired by the state, the United States, or any department or agency ~~thereof~~ of the state or the United States, ~~such~~ the membership interest ~~shall~~ must be canceled by the limited liability company, ~~which shall~~ and must be reissued to any persons ~~subsequently~~ acquiring title to ~~such~~ the land at a later date.

SECTION 207. REPEAL. Sections 45-10.1-54 and 45-22-08 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 96**HOUSE BILL NO. 1364**

(Representatives Koppang, Disrud, Pollert, Stefonowicz)
(Senators Lee, Lindaas)

**COOPERATIVE ASSOCIATION ARTICLES
INFORMATION**

AN ACT to amend and reenact subsection 11 of section 10-15-05 of the North Dakota Century Code, relating to information required in articles of association of a cooperative association filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 10-15-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. The ~~city~~ complete address in this state ~~in which~~ where the cooperative's principal office is to be located, or the name and complete address in this state of ~~the~~ the cooperative's registered agent.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 97**HOUSE BILL NO. 1347**
(Representatives Klein, Keiser)
(Senator Grindberg)**NONPROFIT HOSPITAL AGREEMENTS**

AN ACT to create and enact four new sections to chapter 10-33 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals; and to amend and reenact subsection 3 of section 10-33-85, subsection 1 of section 10-33-88, and subsection 3 of section 10-33-94 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 10-33-85 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of this Act before ~~it~~ the corporation may merge ~~or~~, consolidate ~~or~~, sell, lease, transfer, or dispose of all or substantially all of ~~its~~ the corporation's assets.

SECTION 2. AMENDMENT. Subsection 1 of section 10-33-88 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-33-87 and after compliance with section 10-33-122 and section 4 of this Act, if applicable, articles of merger or consolidation must be prepared that contain:
 - a. The plan of merger or consolidation;
 - b. A statement that the plan has been approved by each corporation under this chapter; and
 - c. A statement that the notice ~~of~~ to the attorney general required by section 10-33-122 or section 4 of this Act has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 10-33-122 or section 4 of this Act is not applicable.

SECTION 3. AMENDMENT. Subsection 3 of section 10-33-94 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of this Act before selling, leasing, transferring, or disposing of all or substantially all of ~~its~~ the corporation's assets under this section.

SECTION 4. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Notice to attorney general - Waiting period.

1. A corporation doing business as a hospital shall notify the attorney general in writing before closing an agreement or a transaction that will:
 - a. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of to a for-profit organization fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization;
 - b. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of any of the assets or operations of the corporation doing business as a hospital or any of the assets or operations of a related organization if the transaction or agreement will result in any for-profit organization owning or controlling fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization; or
 - c. Result in any for-profit organization having control of, governance of, or the power to direct management and policies of the corporation doing business as a hospital or a related organization.
2. The notice must include:
 - a. The names and addresses of the corporation doing business as a hospital, the for-profit organization, and all other parties to the proposed agreement or transaction;
 - b. The terms of the proposed agreement or transaction, including the proposed sale price;
 - c. A copy of the proposed agreement or transaction; and
 - d. Information regarding whether a financial or economic analysis by an independent consultant has been prepared concerning the degree to which the proposed agreement or transaction will serve the public interest, or concerning the fair market value of the corporation doing business as a hospital.
3. A corporation doing business as a hospital may neither transfer nor convey any assets or control through an agreement or transaction described in this section until ninety days after the corporation gives the attorney general notice required under this section, unless the attorney general waives all or part of the waiting period. Before the end of the waiting period, the attorney general may extend the period up to sixty additional days by providing written notice of the extension to the corporation. The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order.

4. The notice requirements of this section do not apply to a proposed agreement or transaction between related organizations serving the same or similar charitable purposes and are in addition to any notice requirements that may apply under section 10-33-122.

SECTION 5. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Attorney general's powers and duties - Experts.

1. Upon receipt of a notice under section 4 of this Act, the attorney general may review and investigate the proposed agreement or transaction and may require the corporation doing business as a hospital and the for-profit organization to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.
2. Upon receipt of a notice under section 4 of this Act, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the corporation doing business as a hospital is consistent with the fiduciary obligations of the corporation doing business as a hospital and the obligations of the officers and directors of the corporation doing business as a hospital and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:
 - a. Whether appropriate steps were taken by the corporation doing business as a hospital to safeguard restricted assets transferred to the for-profit organization;
 - b. Whether appropriate steps were taken by the corporation doing business as a hospital to ensure that any proceeds of the proposed agreement or transaction are used for charitable purposes consistent with restrictions placed on assets of and with the charitable purposes of the corporation doing business as a hospital;
 - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the corporation doing business as a hospital, including whether the corporation doing business as a hospital will receive fair market value for the assets of the corporation;
 - d. Whether any conflict of interest or breach of fiduciary duty, as determined by the attorney general, exists and was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the corporation doing business as a hospital, the for-profit organization, and any other party to the agreement or transaction; and
 - e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the corporation doing business as a hospital.

3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and shall obtain public comment regarding the proposed agreement or transaction. If the attorney general intends to seek payment from the corporation doing business as a hospital for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the corporation doing business as a hospital of the expert cost projected to be incurred. A corporation doing business as a hospital which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the corporation doing business as a hospital objects to paying the costs of an expert, the corporation may seek a district court order limiting the corporation's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.
4. Section 44-04-18.4 applies to any information provided to the attorney general under this Act.

SECTION 6. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Notice of decision - Public meeting - Meeting notice. Before the attorney general approves, denies, or takes any other action on a proposed agreement or transaction under section 4 or 5 of this Act, the attorney general shall notify, in writing, the corporation doing business as a hospital of the attorney general's decision. Before issuing a written decision under this section, the attorney general shall conduct at least one public hearing, one of which must be held in the county where the corporation doing business as a hospital is located. At a public hearing under this section, the attorney general shall request and receive comments from any interested person regarding the proposed agreement or transaction. At least fourteen days before a public hearing under this section, the attorney general shall provide notice of the meeting by publication in the official newspaper of the city in which the corporation doing business as a hospital is located. The attorney general shall also provide notice of the meeting to the governing body of the county in which the corporation doing business as a hospital is located, if applicable, and to the governing body of the city in which the corporation doing business as a hospital is located, if applicable.

SECTION 7. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Attorney general decision. The attorney general may bring proceedings to secure compliance with section 4 of this Act. If the attorney general determines consummation of the proposed transaction or agreement is not consistent with the fiduciary obligations of the corporation doing business as a hospital and the corporation's officers and directors or is not in accordance with law, the attorney general may bring proceedings to enjoin the consummation of the proposed transaction or agreement or to secure any other relief available under the law. Failure of the attorney general to take action on a proposed agreement or transaction described in section 4 of this Act does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

Approved March 22, 1999
Filed March 23, 1999

COUNTIES

CHAPTER 98

SENATE BILL NO. 2390

(Senators Lyson, Kinnoin)
(Representatives Nichols, Wald)

STATE'S ATTORNEY AND SHERIFF APPOINTMENT AND ELECTION

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the appointment of state's attorneys; to amend and reenact sections 11-08-05, 11-08-07, 11-08-08, 11-08-09, 11-08-10, 11-08-13, 11-08-15, 11-09-18, 11-09-19, subsection 3 of section 11-09.1-05, sections 11-10-02, 11-10-04, subsection 3 of section 11-10.2-01, and section 11-15-01.1 of the North Dakota Century Code, relating to the election of the county sheriff and county state's attorney; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-08-05 of the North Dakota Century Code is amended and reenacted as follows:

11-08-05. Vote required - Effective date - Procedure for discontinuance. If a majority of the votes cast on the question of the adoption of the county consolidated form of government are in favor of that form, it becomes effective on the first day of January next succeeding the election. All elected officers whose offices become appointive under this chapter shall continue in office until their successors 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 2. AMENDMENT. Section 11-08-07 of the North Dakota Century Code is amended and reenacted as follows:

11-08-07. Appointive officers - County commissioners, sheriff, and state's attorney elected - Terms of office - How vacancy filled. The board of county commissioners shall appoint each county officer mentioned in section 11-08-06, except the members of the board of county commissioners, who must be elected in the manner provided in section 11-11-02, and the sheriff and the state's attorney, who must be elected as provided in section 11-10-02, except as provided in section 12 of this Act. Each county officer shall hold office for a term of four years, except as otherwise provided in this chapter, and until the officer's successor is duly

appointed and qualified. The board of county commissioners shall fill any vacancy resulting from any cause.

SECTION 3. AMENDMENT. Section 11-08-08 of the North Dakota Century Code is amended and reenacted as follows:

11-08-08. When appointment of officers made - Qualification. The county officers to be appointed must be appointed by the board of county commissioners at the following times in the year in which the county consolidated office form of government goes into effect:

1. On or before the fifteenth day of January, the ~~sheriff, state's attorney, and~~ coroner must be appointed, and ~~such officers shall~~ the coroner must qualify within ten days thereafter.
2. Not less than ten days prior to April first, the county auditor must be appointed, and the appointee qualify within ten days thereafter.
3. Not less than ten days prior to May first, the county treasurer must be appointed, and the appointee ~~shall~~ must qualify within ten days thereafter.

Thereafter, the appointments must be made within ten days prior to the expiration of the terms of office of the officers. The failure of the board of county commissioners to make any appointment within the time prescribed does not impair its power to make the appointment subsequently for the remainder of the term of office of the officer so appointed.

SECTION 4. AMENDMENT. Section 11-08-09 of the North Dakota Century Code is amended and reenacted as follows:

11-08-09. Compensation of officers. Each member of the board of county commissioners and each other county officer who is appointed by ~~such~~ the board shall or elected must receive as compensation for services the salary prescribed by law for ~~such~~ the officer, except that the county auditor ~~shall~~ must receive a salary not exceeding three thousand dollars per annum and the county treasurer ~~shall~~ must receive a salary not exceeding the amount provided by law for the office of county treasurer, to be fixed by the board of county commissioners.

SECTION 5. AMENDMENT. Section 11-08-10 of the North Dakota Century Code is amended and reenacted as follows:

11-08-10. Board may appoint officers Sheriff or state's attorney of adjoining county may run for election - Term of office - Compensation. The ~~board of county commissioners may appoint~~ the sheriff or the state's attorney, or both, of an adjoining county to ~~act as the sheriff or state's attorney of its county~~ may run for election in a county which has adopted the county consolidated office form of government. Any such officer of an adjoining county so ~~appointed~~ elected shall serve for a term of ~~two~~ four years and until that officer's successor is ~~appointed~~ elected and qualified. An officer ~~appointed~~ elected under this section is eligible to serve in such dual capacity and ~~shall~~ must receive, in addition to the salary as an officer of the county of residence, a sum not exceeding one-half of such salary, to be fixed by the board of county commissioners. The additional salary ~~shall~~ must be paid by the county in the same manner as other county officers are paid.

SECTION 6. AMENDMENT. Section 11-08-13 of the North Dakota Century Code is amended and reenacted as follows:

11-08-13. Powers and duties of other officers. The sheriff, state's attorney, and coroner elected or appointed under this chapter shall perform the duties and exercise the powers conferred by law upon them.

SECTION 7. AMENDMENT. Section 11-08-15 of the North Dakota Century Code is amended and reenacted as follows:

11-08-15. Removal of officers. Any county officer appointed by the board of county commissioners or elected under the provisions of this chapter may be suspended or removed by the governor or by judicial proceedings in the manner provided by law.

SECTION 8. AMENDMENT. Section 11-09-18 of the North Dakota Century Code is amended and reenacted as follows:

11-09-18. State's attorney to be elected - ~~Appointment~~ - Powers - Duties. ~~The county manager~~ Except as provided in section 12 of this Act, the state's attorney of a county adopting any form of county managership, with the approval of the board of county commissioners, may appoint a must be elected in the manner prescribed by general statutes. The state's attorney ~~to shall~~ serve as legal adviser to the board of county commissioners and to the county manager, ~~to act~~ as counsel for the county in any suit instituted by or against it, and ~~to perform such~~ other duties as may be prescribed by the board of county commissioners or which are imposed on state's attorneys by general statute. ~~In a county adopting a short form of county managership, the county manager, with the approval of the board of county commissioners, from time to time or on an annual basis, may appoint the~~ The state's attorney of an adjoining county to perform such duties as are required of a state's attorney may run for election in a county which has adopted a short form of county managership. The compensation of the state's attorney of an adjoining county ~~shall must~~ be that agreed upon by the person so ~~appointed~~ elected, the county manager, and the boards of county commissioners of the two counties affected.

SECTION 9. AMENDMENT. Section 11-09-19 of the North Dakota Century Code is amended and reenacted as follows:

11-09-19. Sheriff - Election - ~~Appointment~~ - Duties - Powers. The sheriff of a county adopting a any form of county manager form of government shall managership must be elected in the manner prescribed by general statutes and ~~shall must~~ perform the duties and be subject to the restrictions contained in the general statutes. ~~In a county adopting a short form of county managership, the county manager shall, with the approval of the board of county commissioners, appoint one or more police officers who shall perform all police duties imposed on the sheriff by general statutes. All other duties imposed on the sheriff shall be performed by or under the direction of the county manager. The county manager, from time to time or on an annual basis, may contract with an adjoining county and its sheriff to obtain the services of such sheriff, and the of an adjoining county may run for election in a county that has adopted a short form of county managership. The compensation of such officer shall the sheriff of an adjoining county must be such as shall be that~~ agreed upon by the sheriff so elected, the county manager, and the boards of county commissioners of the counties affected.

SECTION 10. AMENDMENT. Subsection 3 of section 11-09.1-05 of the 1997 Supplement to 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 chapter 11-10.2. 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. This subsection does not authorize a county to redesignate the elected offices of sheriff and state's attorney as appointed, except as provided in section 12 of this Act.

⁸⁶ **SECTION 11. AMENDMENT.** Section 11-10-02 of the 1997 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 chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court, except as otherwise provided by this section.
4. ~~One state's attorney.~~
5. ~~One sheriff.~~
6. ~~One county treasurer.~~
7. 5. One coroner.
8. 6. A board of county commissioners consisting of three or five members as provided in this title.

In addition, unless otherwise provided in section 12 of this Act, each county must have an elected state's attorney and an elected sheriff. In counties having a population of six thousand or less, the register of deeds shall perform the functions of the clerk of the district court, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for

⁸⁶ Section 11-10-02 was also amended by section 7 of House Bill No. 1275, chapter 278.

nomination to county offices may first be filed for the primary election. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election. For a county that has properly initiated the option pursuant to section 11-17-11, and the office of the clerk of court is funded by the legislative assembly, the board of county commissioners may provide for the functions of the register of deeds, which may include functions of the clerk of district court and other functions as determined by the board of county commissioners. 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. 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, 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 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 12. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Appointment of state's attorney upon voter approval. Upon the submission to the board of county commissioners of 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 or upon resolution of the board of county commissioners, the county auditor shall place the question of appointing the state's attorney on the ballot at the next regular election. If a majority of the qualified electors of the county voting on the question approves the change from elective to appointive, the change is effective at the end of the term of office of the state's attorney holding office at the time of the election.

SECTION 13. 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 the person is ~~chosen or~~ appointed, and a county commissioner must be a qualified elector in the district from which 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. A candidate for election to a county office must be, at the time of election, a qualified elector in the jurisdiction in which the candidate is to serve. 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.

⁸⁷ **SECTION 14. AMENDMENT.** Subsection 3 of section 11-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. This option is available in addition to, or in lieu of, other county structural options authorized under this title, unless a specific mandate for combining or separating particular county offices is otherwise provided by law. The office of ~~county judge~~ sheriff is excluded from the application of this chapter.

SECTION 15. AMENDMENT. Section 11-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

11-15-01.1. Sheriff must be qualified elector and ~~shall~~ must receive required training - Exception. Except as otherwise specifically provided by state law, the sheriff must be a qualified elector in the county in which the sheriff is elected ~~or appointed~~. Within one year after taking office, the sheriff shall attend the sheriffs' school on civil process for one week, and unless already licensed under sections 12-63-01 through 12-63-14, shall begin the training necessary to become so licensed. Within two years after taking office, the sheriff shall complete the procedures required to be licensed under sections 12-63-01 through 12-63-14.

SECTION 16. APPLICATION. Section 12 of this Act does not apply to any county that has an appointive state's attorney before the effective date of this Act.

Approved April 2, 1999
Filed April 2, 1999

⁸⁷ Section 11-10.2-01 was also amended by section 32 of House Bill No. 1045, chapter 50.

CHAPTER 99

HOUSE BILL NO. 1362

(Representatives Maragos, Koppelman, Rose)
(Senators Kelsh, Lee)

COUNTY OFFICER SALARIES

AN ACT to amend and reenact sections 11-10-10, 11-10-10.1, and subsection 2 of section 11-16-05 of the North Dakota Century Code, relating to the salaries of elected county officers and restrictions on the powers of full-time state's attorneys; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁸ **SECTION 1. AMENDMENT.** Section 11-10-10 of the North Dakota Century Code is amended and reenacted as follows:

11-10-10. Salaries of elected county officers.

1. The salary of ~~the~~ an elected county auditor, county treasurer, county superintendent of schools, register of deeds, clerk of district court, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of ~~such~~ the census has been published ~~by the director of the census or such other official as may be charged with the duty of making such official publication.~~ Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.
2. ~~The~~ An elected county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court ~~each shall receive~~ are entitled to the following minimum annual salary, payable monthly, for official services rendered:
 - a. ~~Seventeen~~ Nineteen thousand dollars in counties having a population of less than eight thousand.
 - b. ~~Seventeen~~ Nineteen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries

⁸⁸ Section 11-10-10 was also amended by section 10 of House Bill No. 1275, chapter 278.

provided for ~~herein~~ in this subsection within the limitations contained in this subdivision.

The compensation for the clerk of a district court which is funded by the state pursuant to section 11-17-11 must be set by the supreme court as a part of the judicial branch personnel system.

3. ~~Repeated by S.L. 1975, ch. 87, § 2:~~
4. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. ~~In the event~~ If the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, ~~such~~ the benefits may be in addition to the salaries payable to county officials.
5. ~~4.~~ Each county commissioner may receive an annual salary or per diem as provided by resolution of the board; ~~with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.~~

~~If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.~~

6. ~~5.~~ Sheriffs shall receive An elected sheriff is entitled to the following minimum annual salary, payable monthly, for official services rendered:
 - a. ~~Nineteen~~ Twenty-one thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. ~~Twenty~~ Twenty-two thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for ~~herein~~ in this subsection within the limitations contained in this subdivision.

7. ~~6.~~ ~~State's attorneys~~ An elected state's attorney in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney ~~shall~~ must be full time and ~~shall~~ may not be an attorney or counsel for any party except the state or county, ~~shall~~ is entitled to receive ~~forty-five~~ a minimum salary of forty-seven thousand dollars; ~~but the county may increase that amount up to the same salary as a county court judge.~~ State's attorneys not considered full time ~~shall receive~~ are entitled to an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

SECTION 2. AMENDMENT. Section 11-10-10.1 of the North Dakota Century Code is amended and reenacted as follows:

11-10-10.1. Legislative intent in regard to county salaries. It is the intent of the legislative assembly that the several boards of county commissioners shall exercise the responsibility of setting the salaries of county officials within the limits imposed by section 11-10-10. A board of county commissioners, in making a decision in regard to a county official's salary, should take into account the financial status of the county, the responsibilities of the position, and any ~~other~~ other factors ~~which~~ that the board may deem deems relevant in arriving at ~~such~~ the decision.

SECTION 3. AMENDMENT. Subsection 2 of section 11-16-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Be eligible to or hold any state or federal judicial office except that of United States commissioner.

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act become effective on January 1, 2000.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 100**HOUSE BILL NO. 1357**

(Representatives Delmore, Clark, Severson)
(Senators Kelsh, Lyson, Watne)

COUNTY OFFICIAL TRAINING

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the training of newly elected or appointed county officials.

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:

Newly elected or appointed county officials - Training. Within one year of assuming office, an individual who is elected or appointed to the office of county commissioner, auditor, clerk of district court, register of deeds, or treasurer shall attend training based upon a curriculum specific to that office and approved by the statewide association for that office.

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 101**HOUSE BILL NO. 1146**

(Representative Galvin)

COUNTY COMMISSION PET REGULATION

AN ACT to amend and reenact subsection 22 of section 11-11-14 of the North Dakota Century Code, relating to powers of boards of county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 22 of section 11-11-14 of the North Dakota Century Code is amended and reenacted as follows:

22. To regulate ~~or prohibit the running at large of animals~~ the confinement and control of dogs, cats, and other household pets, provided the regulations do not conflict with rules adopted by the state board of animal health.

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 102**HOUSE BILL NO. 1446**

(Representatives Haas, Boucher, Mahoney)
(Senators Krauter, Urlacher)

UNORGANIZED TERRITORY ROAD LEVY

AN ACT to amend and reenact sections 11-11-17, 24-06-14, and 57-15-22 of the North Dakota Century Code, relating to the appointment of district overseer of highways for unorganized territory and the levy for roads and bridges in unorganized territory; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-17 of the North Dakota Century Code is amended and reenacted as follows:

11-11-17. Board of county commissioners may supervise the building or repairing of roads, bridges, and property of the county - Compensation. Whenever the board of county commissioners of any county is required by law to lay out, oversee, and supervise the building or repairing of roads and bridges, including the appointment of a district overseer of highways' duties in unorganized territory, or the building or repairing of any property owned by the county, the board may appoint or designate one or more members of the board personally to lay out, oversee, or supervise the building or repairing of any such roads, bridges, or property. Each commissioner ~~shall~~ is entitled to receive as compensation for services the sum of five dollars per day and the mileage provided by law for members of the board of county commissioners.

SECTION 2. AMENDMENT. Section 24-06-14 of the North Dakota Century Code is amended and reenacted as follows:

24-06-14. District overseer of highways. In unorganized territory, the board of county commissioners shall appoint a district overseer of highways whose power and duties are the same as in an organized township, and whose compensation must be fixed by the board of county commissioners to be paid on presentation of a verified bill at the regular meeting of the board of county commissioners. The board may, by resolution, appoint one or more of its members as district overseers.

SECTION 3. AMENDMENT. Section 57-15-22 of the North Dakota Century Code is amended and reenacted as follows:

57-15-22. Tax levy limitations in unorganized townships. The total tax levied by the board of county commissioners in any unorganized township for the construction, maintenance, and improvement of any roads and bridges may not exceed eighteen mills on the dollar of the taxable valuation of the township or the amount in dollars that the township would have been entitled to levy under section 57-15-01.1 if the township had remained organized, but this does not prohibit the levy of general county road and bridge taxes in such unorganized township.

SECTION 4. EFFECTIVE DATE. Section 3 of this Act is effective for taxable years beginning after December 31, 1998.

Approved March 31, 1999
Filed March 31, 1999

CHAPTER 103

HOUSE BILL NO. 1222 (Representatives Kerzman, Froelich) (Senator Krauter)

COUNTY JOB DEVELOPMENT AUTHORITY DISCONTINUANCE

AN ACT to amend and reenact section 11-11.1-01 of the North Dakota Century Code, relating to elections to discontinue county job development authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11-11.1-01. Job development authority - Board of directors' members qualifications.

1. 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.
 - a. If the authority is created, the question of discontinuing the authority may be placed on the ballot at the next regular election by petition filed with the county auditor at least ninety days before any countywide election and 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.
 - b. The question to be voted on at the election must be submitted by ballot in substantially the following form:

| | |
|---|------------------------------------|
| <u>Should the (insert name of job development authority) be terminated?</u> | Yes <input type="checkbox"/> |
| | <u>No</u> <input type="checkbox"/> |
 - c. 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.
2. If the authority is created, a board of directors of not fewer than ten nor more than twenty members must be appointed by the county commissioners and must consist of representatives from the following groups, as they may exist:
 4. a. Two members from the county commission.

2. b. One member from the city council or commission of each city within the county which has a population of five hundred or more.
3. c. One member selected from among the city governments of the remaining cities of the county.
4. d. 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. e. The remaining members must be selected from a list of candidates from the following fields:
 - a. (1) A representative of the local job service office nearest the county seat.
 - b. (2) A member of the local airport authority.
 - c. (3) A member of a local institution of higher education.
 - d. (4) A member from among the school boards of the county.
 - e. (5) A member from a local industrial development organization.
 - f. (6) A member of the regional planning council serving the county.
 - g. (7) A member of the legislative assembly representing a district within the county.
 - h. (8) Members at large from the county.
3. The county commissioners shall make ~~these~~ appointments to the board 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 must 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 9, 1999
Filed March 9, 1999

CHAPTER 104

SENATE BILL NO. 2128 (Senator Fischer)

STATISTICAL INFORMATION COMPILATION FEES

AN ACT to amend and reenact section 11-13-02.1 and subsection 2 of section 44-04-18 of the North Dakota Century Code, relating to fees charged for compiling statistical information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-13-02.1 of the North Dakota Century Code is amended and reenacted as follows:

11-13-02.1. Duties of county official in rendering services to private individuals, firms, or corporations - Fees to be charged - Disposition of fees - Records to be kept. ~~It shall not be the duty of any A county official is not required to compile statistical information for, or furnish copies of records to, private individuals, firms, or corporations, other than that required of the county auditor by section 11-13-15. A county official may compile statistical information for, or furnish copies of records to, private individuals, firms, or corporations upon payment of a suitable charge which shall must be commensurate with costs to the county of providing such the services. Such If the service takes more than an hour to provide, the board of county commissioners shall determine the fee shall be a minimum of twenty-five cents and shall, which may not exceed the sum of one dollar twenty-five dollars per hour, excluding the initial hour, for time consumed in compiling such the statistical information or preparing such copies of records, to be remitted. The county official shall remit the fees each month to the county treasurer for credit to the county general fund. The county official shall keep a complete record of fees collected under this section.~~

SECTION 2. AMENDMENT. Subsection 2 of section 44-04-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. A request need not be made in person or in writing, and the copy must be mailed upon request. The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but

excluding any cost associated with locating, reviewing, or providing access to the requested record, or any cost associated with excising confidential or closed material under section 44-04-18.8. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 105**SENATE BILL NO. 2231**

(Senators B. Stenehjem, Kringstad)
(Representatives Carlisle, Henegar)

ABSTRACT CERTIFICATION REPEAL

AN ACT to repeal sections 11-13-10 and 11-14-05 of the North Dakota Century Code, relating to certification of abstracts by county auditors and treasurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 11-13-10 and 11-14-05 of the North Dakota Century Code are repealed.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 106

SENATE BILL NO. 2130

(Government and Veterans Affairs Committee)
(At the request of the State Auditor)

STATE AUDITOR DUTIES

AN ACT to amend and reenact sections 11-14-18, 11-22-04, 11-28.3-11, 16.1-14-15, 18-11-22, 23-30-09, 26.1-21-09, 36-15-09, 36-22-09, 44-09-26, 48-02-07, 49-17.2-27, 54-10-03, 54-10-14, 54-10-19, 61-03-03, and 61-03-18 of the North Dakota Century Code, relating to the duties of the state auditor; and to repeal section 25-07-09 of the North Dakota Century Code, relating to the collection of clothing account at the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-14-18 of the North Dakota Century Code is amended and reenacted as follows:

11-14-18. Failure of treasurer to make settlement - Auditor to start suit. If a county treasurer fails to make return and settlement, or fails to pay over all money with which the treasurer stands charged, at the time and in the manner prescribed by law, the county auditor, on receiving instructions for that purpose from the ~~state auditor or from the~~ board of county commissioners of the treasurer's county, shall cause suit to be instituted against the treasurer and the treasurer's sureties, or any of them.

SECTION 2. AMENDMENT. Section 11-22-04 of the North Dakota Century Code is amended and reenacted as follows:

11-22-04. How special funds are disbursed. Moneys deposited under the provisions of this chapter shall be disbursed only upon the order of the county auditor based upon the order of the officer making the deposit or of that officer's successor in office. ~~If any fund deposited is such as is required to be disbursed by warrant or draft drawn by the state auditor, then disbursement thereof shall be made only on such warrant or draft.~~ If the deposit is made in the form of a check or draft, the county treasurer shall not disburse the fund unless or until such check or draft is paid.

SECTION 3. AMENDMENT. Section 11-28.3-11 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-11. Funds collected to be deposited. All funds collected on behalf of the district through the levy of taxes, all donations, contributions, bequests, or annuities, and all borrowed money received by or on behalf of the district shall be deposited in a state or national bank to the credit of the district account and shall be drawn out only by warrant.

Claim vouchers shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district. ~~Once each year at the same time the state auditor examines other county records, the state~~

~~auditor shall examine the records of the secretary-treasurer of the rural ambulance service district, and the cost of such examination shall be paid by the district. The secretary-treasurer of the rural ambulance service district shall bring the records of the district to the office of the county auditor for the examination.~~

SECTION 4. AMENDMENT. Section 16.1-14-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-14-15. Costs - Taxation. The costs of an election contest under the provisions of this chapter must be taxed under the direction of the board. If two or more cases are heard together, the costs must be apportioned as the board shall direct. In each case in which the petitioners do not prevail, the costs must be paid by them, and in each case in which the petitioners prevail, the costs must be paid by the state. If the costs are required to be paid by the state, the board shall certify the costs to the state auditor office of management and budget, ~~who~~ which shall issue ~~the state auditor's~~ a warrant upon the state treasurer in payment of the same.

SECTION 5. AMENDMENT. Section 18-11-22 of the North Dakota Century Code is amended and reenacted as follows:

18-11-22. Examination of relief association records - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary-treasurer of each firefighters relief association receiving funds under the provisions of this chapter must be examined pursuant to section 54-10-14. If the audit report discloses that the money, or any part of it, has been or is being expended for unauthorized purposes, the state auditor shall report the facts to the governor. Thereupon, the governor shall direct the state auditor office of management and budget to refuse to issue any warrants for the benefit of the fire department or relief association of the municipality in which such association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

SECTION 6. AMENDMENT. Section 23-30-09 of the North Dakota Century Code is amended and reenacted as follows:

23-30-09. Funds collected to be deposited. The following must be deposited in a state or national bank qualified as a depository for public funds to the credit of the district fund and may be drawn out only by warrant:

1. All funds collected on behalf of the district through the levy of taxes.
2. All income and earnings of the district.
3. All donations, contributions, bequests, or annuities.
4. All borrowed money received by or on behalf of the district.

~~Such claim voucher must be authorized by the board of directors and must bear the signature of the treasurer and the countersignature of the president of such district. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district. ~~Once each year at the same time the state auditor examines other county records he shall examine the records of the secretary-treasurer of the district, and the cost of such examination must be paid by such district. The secretary-treasurer of the district shall bring his records to the office of the county auditor for such examination.~~~~

SECTION 7. AMENDMENT. Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09. Premiums - Amount to whom paid - Minimum. The premium for a blanket bond must be determined by the commissioner. Premiums must be paid in advance by the proper authority of the state, or of the political subdivision of the state, from its treasury, to the state treasurer who shall keep the same in the fund. The state treasurer shall issue ~~quadruple~~ receipts ~~therefor~~ in triplicate. The treasurer shall file one of such receipts in the treasurer's office, and shall mail one to the official making such payment; and one to the commissioner; ~~and one to the state auditor~~. The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for such longer terms as the commissioner may prescribe. From and after July 1, 1953, the premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two and one-half million dollars. The collection of premiums must be resumed on the bonds, at the rates herein set forth, whenever the reserve fund is depleted below the sum of two and one-half million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two and one-half million dollars.

⁸⁹ **SECTION 8. AMENDMENT.** Section 36-15-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-09. Return of appraisal - Payment of claims for diseased animals. The return of an appraisal made under this chapter must be in writing and signed by the board or by the agent thereof which made the appraisal, or by the members of the board of appraisers if a reappraisal is made after a protest, and by the owner of the condemned animal. The return must be certified by the commissioner of agriculture to the ~~state auditor~~ office of management and budget, ~~who~~ which shall draw a warrant upon the state treasurer in favor of the owner of the animal. The amount of indemnity paid by this state, however, must be, in the case of an animal condemned because it is infected with tuberculosis or paratuberculosis, one-third of the difference between the appraised value of the animal and the net value of the salvage received by the owner, however, the indemnity payments may not exceed twenty-five dollars for each grade animal or fifty dollars for each registered purebred animal, except, that if the federal government fails to provide an amount of indemnity equal to that provided by the state, the owner must be paid one-half of the difference between the appraised value of the animal and the net value of the salvage thereof. Before any indemnity payment is made for such registered purebred animals, a certificate of registration in a recognized herdbook must be submitted to the state veterinarian prior to the date set for slaughter of said animal. This state is not liable for indemnity under this chapter in excess of the amount appropriated for the payment of such indemnity by the legislative assembly and the state is not liable for indemnity for any animal killed during a biennium after the appropriation for such biennium has been exhausted.

SECTION 9. AMENDMENT. Section 36-22-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁸⁹ Section 36-15-09 was also amended by section 22 of House Bill No. 1276, chapter 317.

36-22-09. Audit of stockmen's association. It is the duty of the board of directors of the North Dakota stockmen's association to provide for an audit at least once every two years by a certified public accountant or licensed public accountant. Two copies of each audit report must be submitted to the state auditor's office legislative council.

SECTION 10. AMENDMENT. Section 44-09-26 of the North Dakota Century Code is amended and reenacted as follows:

44-09-26. Court of impeachment - Compensation - Members - Counsel - Payment. The presiding officer, except the chief justice when presiding, and members of the senate, while sitting as a court of impeachment, and members of the house of representatives, each shall be entitled to receive his regular per diem compensation and expense reimbursement as provided in section 54-03-20 and mileage; plus five dollars per day as reimbursement for expenses as provided in section 54-06-09, while attending the court of impeachment. The compensation of the secretary of the senate, sergeant at arms, and all subordinate officers, clerks, stenographers, and reporters of the court and counsel employed to assist the managers and counsel selected and employed by accused with respect to his the accused's defense in his the impeachment trial, must be such amount as must be determined upon by a vote of the members of such court; provided, however, that the amount paid to the counsel employed to assist the managers and the amount paid to the counsel employed to assist the accused must be equal. The state auditor office of management and budget, upon presentation of a certificate signed by the presiding officer and secretary of the senate, shall ~~draw his warrants upon the state treasurer to~~ pay from the general fund the expense of the senate, and the compensation of the officers, clerks, stenographers, and reporters and counsel under the provisions of this chapter.

SECTION 11. AMENDMENT. Section 48-02-07 of the North Dakota Century Code is amended and reenacted as follows:

48-02-07. Allowance and payment of estimates - Investment of retainage. At least once in each calendar month during the continuance of work upon any public building or erection begun and carried on under the provisions of this chapter, the governing board, or a committee thereof duly authorized by the board for that purpose, shall meet and receive and consider estimates furnished by the supervising architect or the superintendent of construction of such building or erection, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in the construction thereof, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing board may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. The remaining amount retained shall be paid to the contractor in such amounts and at such times as are approved by the supervising architect or superintendent of construction, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. If no supervising architect and no superintendent of construction is employed upon such contract, the contractor, at the end of each calendar month during the continuance of work under any such contract, may furnish to such board or public body in charge of such work like estimates which shall be allowed in like manner. Said board or committee thereof, immediately after considering and allowing any such estimate, shall certify and forward the same to the ~~state auditor,~~ county auditor, city auditor, or other official having the power to draw warrants,

who forthwith shall draw ~~his~~ that official's warrant upon the proper fund and transmit the same promptly to the contractor entitled thereto. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit said retained amounts in any financial association or institution in North Dakota, so that the contractor's money will be earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by ~~him~~ the contractor upon completion of the contract.

SECTION 12. AMENDMENT. Section 49-17.2-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-17.2-27. Designation of director of department of transportation as agent of authority - Funds held in separate account - ~~Vouchers and warrants.~~ An authority may designate the director of the department of transportation as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter. It may designate the director of the department of transportation as its agent to contract for and supervise the planning, acquisition, development, construction, improvement, maintenance, equipping, or operation of any railroad or railroad facility.

All funds received by the director of the department of transportation pursuant to this section shall be deposited in the state treasury. Unless otherwise prescribed by the agency from which such funds were received, the funds shall be kept in separate accounts according to the purposes for which the funds were made available. Such funds shall be held by the state in trust for such purposes, and paid ~~on warrants drawn by the state auditor on vouchers~~ out only when approved by the director of the department of transportation.

⁹⁰ **SECTION 13. AMENDMENT.** Section 54-10-03 of the North Dakota Century Code is amended and reenacted as follows:

54-10-03. Official bond. The state auditor shall ~~execute an official~~ be covered by a fidelity bond in the sum of at not less than twenty thousand dollars.

SECTION 14. AMENDMENT. Section 54-10-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.

⁹⁰ Section 54-10-03 was repealed by section 24 of Senate Bill No. 2360, chapter 113.

3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison diversion conservancy district.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.
18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political

subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

SECTION 15. AMENDMENT. Section 54-10-19 of the North Dakota Century Code is amended and reenacted as follows:

54-10-19. Supervision of books and accounts of public institutions and private institutions with which state has dealings. The state auditor shall assume and exercise ~~constant~~ supervision over the books and financial accounts of the several public offices and institutions which ~~he~~ the state auditor is authorized to examine. ~~He shall prescribe and enforce a correct and uniform method of keeping financial accounts in such offices and institutions; shall recommend a form for warrants or for order checks of all local units of government except school districts which shall conform so far as consistent with statutory requirements and shall instruct the proper officer of each of said institutions in the due performance of his duties concerning the same. He shall have authority to~~ The state auditor may examine the books and accounts of all private institutions with which the state has any dealings so far only as the same relate to such dealings. If any public officer having control of any such office or institutions fails or refuses to comply with the directions of the state auditor, the auditor shall report the facts to the governor and to the manager of the state bonding fund, and such refusal constitutes grounds for removal from office and cancellation of the bond of such officer.

SECTION 16. AMENDMENT. Section 61-03-03 of the North Dakota Century Code is amended and reenacted as follows:

61-03-03. Auditing of claims. All claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer and which are payable from the funds appropriated for the prosecution of the work under the state engineer's direction and supervision, shall be approved by the state engineer ~~and properly vouchered and filed in the office of the state auditor.~~

SECTION 17. AMENDMENT. Section 61-03-18 of the North Dakota Century Code is amended and reenacted as follows:

61-03-18. Hydrographic survey fund - Use - Payments. The hydrographic survey fund, a permanent fund, shall be used only for the payment of the expenses of the surveys ordered by the court as provided in section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer in the prosecution of such surveys shall be approved by the state engineer ~~and properly vouchered and filed in the office of the state auditor.~~ The amounts paid by the parties to such suits, on account of such surveys, shall be paid to the state treasurer, who shall credit the same to such fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.

SECTION 18. REPEAL. Section 25-07-09 of the North Dakota Century Code is repealed.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 107

HOUSE BILL NO. 1042

(Legislative Council)
(Judiciary Committee)

CLERK OF COURT FILING FEES

AN ACT to amend and reenact sections 11-17-04, 11-26-04, 26.1-02-19, 28-20.1-05, 30.1-21-08, 30.1-32-02, 35-18-04, 35-21-05, 43-01-19, and 57-22-32 of the North Dakota Century Code, relating to filing fees charged by the clerk of district court; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-17-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-17-04. (Effective through March 31, 1999) Fees to be charged by the clerk of the district court.

1. The clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed four hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14.
 - (3) For all other filings, forty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.
 - d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.

- e. For preparing, certifying, issuing, or transmitting any document, ten dollars; or a lesser fee as may be set by the state court administrator.
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

(Effective April 1, 1999) Fees to be charged by the clerk of the district court.

1. The clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed four hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.
 - d. ~~For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.~~
 - e. ~~For preparing, certifying, issuing, or transmitting any document, ten dollars; or a lesser fee as may be set by the state court administrator.~~
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty

dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.

- e. For filing a foreign decree or foreign judgment, eighty dollars.
 - f. For filing a petition of subsequent administration, eighty dollars.
 - g. For filing a statement or a petition under section 30.1-32-02, eighty dollars.
 - h. For filing any other matter authorized to be filed in the office of the clerk of court, ten dollars.
 - i. For preparing, certifying, issuing, or transmitting any document, ten dollars; or a lesser fee as may be set by the state court administrator.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

⁹¹ **SECTION 2. AMENDMENT.** Section 11-26-04 of the North Dakota Century Code is amended and reenacted as follows:

11-26-04. Meetings of board, when held - Fees. Whenever a debtor or creditor calls for assistance upon the debt adjustment board of the county within which the debtor resides and pays to the clerk of the district court a filing fee as prescribed in ~~subdivision e of subsection 4 of~~ section 11-17-04, ~~such the~~ clerk shall call a meeting of the debtor and the debtor's creditors with the board at the earliest possible date. The clerk shall notify the members of the board and the debtor and creditors of the time and place of such meeting. If a debtor requesting a meeting makes and files an affidavit stating that the debtor is financially unable to pay the fee provided for in this section, the payment ~~thereof shall~~ of the fee must be waived.

⁹² **SECTION 3. AMENDMENT.** Section 26.1-02-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-19. Fees. Any person filing a foreign decree shall pay a filing fee as prescribed in ~~subdivision e of subsection 4 of~~ section 11-17-04 to the clerk of court. Fees for docketing, transcriptions, or other enforcement proceedings are as provided for decrees of the district court.

⁹³ **SECTION 4. AMENDMENT.** Section 28-20.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁹¹ Section 11-26-04 was also amended by section 25 of House Bill No. 1275, chapter 278.

⁹² Section 26.1-02-19 was also amended by section 43 of House Bill No. 1275, chapter 278.

⁹³ Section 28-20.1-05 was also amended by section 54 of House Bill No. 1275, chapter 278.

28-20.1-05. Fees. Any person filing a foreign judgment shall pay to the clerk of court a filing fee as prescribed in ~~subdivision d of subsection 4 of section 11-17-04~~. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court of any county of this state.

SECTION 5. AMENDMENT. Section 30.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-21-08. (3-1008) Subsequent administration - Fee. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court, upon petition of any interested person and upon notice as it directs, may appoint the same or a successor personal representative to administer the subsequently discovered estate. Any person filing a petition under this section shall pay to the clerk of district court a filing fee as prescribed in section 11-17-04. If a new appointment is made, unless the court orders otherwise, the provisions of this title apply as appropriate, but no claim previously barred may be asserted in the subsequent administration.

SECTION 6. AMENDMENT. Section 30.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-32-02. (7-102) Registration procedures - Fee. Registration ~~shall~~ must be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. Any person filing a statement under this section or a petition for allowance of trustee's annual report or other remedies shall pay to the clerk of district court a filing fee as prescribed in section 11-17-04. The statement ~~shall~~ must indicate whether the trust has been registered elsewhere. The statement ~~shall~~ must identify the trust:

1. In the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate.
2. In the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument.
3. In the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries, and time of performance.

If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.

⁹⁴ **SECTION 7. AMENDMENT.** Section 35-18-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁹⁴ Section 35-18-04 was also amended by section 57 of House Bill No. 1275, chapter 278.

35-18-04. Clerk of court - Filing - Record - Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse on those filings the date and hour of filing and shall keep a record of all lien statements filed in the county, and of any orders, or responses relating to any orders, by the district court. The clerk shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. The clerk shall collect a fee as prescribed in ~~subdivision e of subsection 4 of~~ subdivision e of subsection 4 of section 11-17-04 for filing and indexing each lien.

⁹⁵ **SECTION 8. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-21-05. Fee - Recordation - Certified copies as evidence. If the presiding officer is the clerk of the district court, the clerk may charge a fee as prescribed in ~~subdivision e of subsection 4 of~~ subdivision e of subsection 4 of section 11-17-04 to be paid in advance by the applicant. If the officer is the clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a recording system provided for that purpose. If the officer is the register of deeds, the officer shall record the ~~same notice, affidavit, and undertaking~~ same notice, affidavit, and undertaking in the book of miscellaneous records. The register of deeds may charge a fee as provided by section 11-18-05. Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters therein contained.

⁹⁶ **SECTION 9. AMENDMENT.** Section 43-01-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-19. County officers may certify abstracts. ~~The provisions of this~~ This chapter ~~do~~ does not prevent the register of deeds, county treasurer, or clerk of court from certifying to abstracts of title to lands from the records of their respective offices. Each ~~such~~ officer, however, is liable on ~~his~~ the officer's official bond for the faithful performance of all acts performed by ~~him~~ the officer as ~~such~~ the abstracter. If the officer certifying the abstract is the clerk of court, the clerk shall charge and collect a fee as prescribed in ~~subdivision e of subsection 4 of~~ subdivision e of subsection 4 of section 11-17-04.

⁹⁷ **SECTION 10. AMENDMENT.** Section 57-22-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-22-32. Collection from tax debtor who moves to another county - Duty of county auditor. Upon the removal of a delinquent tax debtor from the county, collection must be made from the debtor in the manner following:

1. In case of the removal of any delinquent tax debtor from the county in which the debtor's personal property was taxed to any other county in this state, ~~it is the duty of~~ the assessor immediately to shall make a proper effort to ascertain the place of the debtor's destination and to report the ~~same place~~ place to the county auditor. ~~Thereupon, the~~ The county

⁹⁵ Section 35-21-05 was also amended by section 58 of House Bill No. 1275, chapter 278, and section 4 of Senate Bill No. 2229, chapter 315.

⁹⁶ Section 43-01-19 was also amended by section 69 of House Bill No. 1275, chapter 278.

⁹⁷ Section 57-22-32 was also amended by section 80 of House Bill No. 1275, chapter 278.

auditor shall ~~make out~~ prepare and forward to the clerk of the district court of the county to which the tax debtor has removed a statement of the amount of ~~such the~~ delinquent taxes, including penalties and costs that may have attached, specifying the value of property on which ~~said~~ the taxes were levied.

2. On receipt of ~~any such~~ the statement, the clerk of the district court receiving the ~~same~~ statement shall issue a warrant to the sheriff of the county, and ~~such the~~ sheriff shall proceed immediately to collect the ~~same~~ taxes in the manner in which the sheriff collects delinquent taxes in the county. The sheriff shall collect from the tax debtor an additional sum as prescribed in subdivision e h of subsection 1 of section 11-17-04 for each warrant. ~~Such~~ The sum must be paid to ~~such the~~ clerk as the fee for issuing ~~said the~~ warrant, and all taxes ~~thus~~ collected must be remitted by the sheriff to the treasurer of the county to which the taxes belong, together with the original statement of account, and if any taxes remain unpaid a statement must be made of the reason ~~therefor~~, and proper entries must be made on the tax lists of the county where the tax was levied.

SECTION 11. EFFECTIVE DATE. This Act becomes effective on April 1, 1999.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 108

SENATE BILL NO. 2280

(Senators Freborg, Watne)

REGISTER OF DEEDS DOCUMENT RECORDING

AN ACT to amend and reenact sections 11-18-01, 11-18-06, 11-18-07, 11-18-10, 11-18-11, 35-03-11, 35-03-16, 35-22-15, 35-22-16, 35-27-12, 40-50.1-14, 40-50.1-17, 47-19-10, 47-29-04, and subsection 2 of section 52-04-12 of the North Dakota Century Code, relating to the recording of documents by the register of deeds; and to repeal section 19-08-07 of the North Dakota Century Code, relating to recording of bottle brands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-01 of the North Dakota Century Code is amended and reenacted as follows:

11-18-01. Register of deeds' duties - Recording and filing instruments - Abstracts - ~~Recording brands.~~ The register of deeds shall:

1. Keep a full and true record, in proper books or other storage media provided for that purpose, of each patent, deed, mortgage, bill of sale, security agreement, judgment, decree, lien, certificate of sale, and other instrument required to be filed or admitted to record, if the person offering ~~such the~~ instrument for filing or recording ~~shall first pay~~ pays to the register of deeds the fees provided by law for ~~such the~~ filing or recording.
2. Endorse upon each instrument filed with the register of deeds for record or otherwise the date and the hour and minute of the day of ~~such the~~ filing or recording.
3. ~~Endorse upon each instrument, when the same is recorded, in addition to the data specified in subsection 2, the number or letter designating the book of records in which the record of the instrument is made and the page upon which it is recorded.~~
4. When the instrument is recorded or filed, endorse ~~thereon~~, in a note at on the instrument the foot of the recorded instrument book and page or document number, the date, and the hour and minute of the date when it was recorded or filed with the register of deeds ~~and the book of records in which the record thereof is made and the page upon which it is recorded.~~
5. ~~4.~~ Prepare a security agreement abstract ~~forthwith~~ whenever any person requests the same agreement and pays the required fee.
6. Continue an abstract of title to real property prepared by the register of deeds whenever any person presents the same to the register of deeds for continuation and pays the required fee.

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FORM OF SECTIONAL SYSTEM OF TRACT INDEX TO REAL ESTATE
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SECTION 4. AMENDMENT. Section 11-18-10 of the North Dakota Century Code is amended and reenacted as follows:

11-18-10. Register of deeds to keep reception book record - Contents. The register of deeds shall keep a ~~book~~ record known as "The Reception ~~Book~~ Record". ~~Such book shall~~ The record must be ruled in parallel columns showing:

1. ~~In the first column at the left side of the page, the~~ The document number.
2. ~~In the second column, the~~ The date of ~~filing~~ recording.
3. ~~In the third column, the~~ The name of the grantor.
4. ~~In the fourth column, the~~ The name of the grantee.
5. ~~In the fifth column, the~~ The character of the instrument.

6. ~~In the sixth column, the~~ The book in which and page or document number upon which the instrument is recorded.
7. ~~In the seventh column, the~~ The name of the person to whom the instrument was delivered returned.
8. ~~In the eighth column, a~~ A brief description of the property, if any, described in the instrument.

Immediately after any document or paper of a kind mentioned in section 11-18-09 is numbered, it ~~shall~~ must be entered in the reception ~~book~~ record. The reception ~~book shall~~ record must be a part of the public records of the office and open to public inspection during office hours.

⁹⁸ **SECTION 5. AMENDMENT.** Section 11-18-11 of the North Dakota Century Code is amended and reenacted as follows:

11-18-11. Register of deeds to record ~~or file~~ instruments. When an instrument affecting the title to or creating a lien upon real estate within the county is numbered and entered in the reception ~~book~~ record and indexed, it ~~shall~~ must be recorded or filed as provided by law. The register of deeds shall ~~write or stamp, or cause to be written or stamped, at the beginning of a recorded provide recording information on the instrument the words "document number" and shall add thereto the number stamped or written on the document.~~ The register of deeds shall add, immediately after the record of such instrument, a certificate reciting that the instrument was filed in the register of deeds' office and giving the date and hour of filing. The register of deeds as required by paragraph 4 of subdivision a of subsection 1 of section 11-18-05 and shall authenticate the certificate information with an official signature; but need not affix and the official seal thereto of the office as required by section 11-18-04.

SECTION 6. AMENDMENT. Section 35-03-11 of the North Dakota Century Code is amended and reenacted as follows:

35-03-11. Certificate of discharge - How recorded. A certificate of the discharge of a mortgage and proof or acknowledgment ~~thereof~~ of the discharge must be recorded at length and a reference made in the record to the book and page or document number where the mortgage is recorded and of the minute of the discharge, made upon the record of the mortgage, to the book and page or document number where the discharge is recorded.

SECTION 7. AMENDMENT. Section 35-03-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-03-16. Satisfaction of mortgage - Discharge - Form - Power of attorney. A recorded mortgage must be discharged upon the record by the register of deeds having custody ~~thereof~~ of the mortgage on the presentation of a certificate of discharge signed by the mortgagee, the mortgagee's executors, administrators, guardians, trustees, assigns, personal representatives, or special administrators appointed for that purpose, properly acknowledged or proved and certified as

⁹⁸ Section 11-18-11 was also amended by section 2 of House Bill No. 1406, chapter 109.

prescribed by chapter 47-19. The certificate of discharge must contain a brief description of the mortgage and must state that the mortgage has been paid in full or otherwise satisfied and discharged and that the officer is authorized to discharge the ~~same mortgage~~ of record. Any person executing a certificate of discharge as a personal representative of the mortgagee first shall file and have recorded in the office of the register of deeds where the mortgage is recorded, a power of attorney showing the person's authority to discharge mortgages in behalf of the mortgagee and in the mortgagee's name. The mortgagee shall present the certificate of discharge to the register of deeds for recording in the county in which the property is located within thirty days after the certificate of discharge is signed. The mortgagee may add the amount of the recording fee to the balance of the debt paid by the mortgagor. A certificate of the satisfaction of a mortgage may be made in substantially the following form:

This certifies that a certain mortgage executed by _____ of _____, mortgagor, to _____ of _____, mortgagee, dated the _____ day of _____ in the year _____, upon the _____ (here describe the property covered by the mortgage) and recorded in the office of the register of deeds in and for the county of _____ and state of North Dakota, in book _____ of mortgages on page _____ or as document number _____, is paid and satisfied; and _____ hereby authorize and require ~~said the~~ register of deeds to discharge the ~~same mortgage~~ of record in the register of deeds' office.

Witness _____ hand this ____ day of _____ A.D.

_____ (Acknowledgment).

SECTION 8. AMENDMENT. Section 35-22-15 of the North Dakota Century Code is amended and reenacted as follows:

35-22-15. Register of deeds - Note of sale on margin of mortgage record. A note referring to the page and book or document number where the evidence of any sale made under a mortgage is recorded must be made by the register of deeds in the margin of the record of ~~such~~ the mortgage.

SECTION 9. AMENDMENT. Section 35-22-16 of the North Dakota Century Code is amended and reenacted as follows:

35-22-16. Affidavit of publication recorded - Effect of in evidence. The affidavit of publication must be recorded at length by the register of deeds of the county in which the real property is situated in a ~~book record~~ record kept for ~~the record of~~ mortgages. The original affidavit, the record thereof, and certified copies of the record are prima facie evidence of the facts ~~therein~~ contained in the record.

SECTION 10. AMENDMENT. Section 35-27-12 of the North Dakota Century Code is amended and reenacted as follows:

35-27-12. Register of deeds to record notice. The register of deeds shall record the verified notice of intention in the reception ~~book~~ record, tract index, and elsewhere according to law.

SECTION 11. AMENDMENT. Section 40-50.1-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-50.1-14. Notice of errors on recorded plat - Certificate by original surveyor. Notwithstanding section 40-50.1-06, if a plat, or what purports to be a plat, has been signed and filed in the office of the register of deeds of the county where the land is situated, and the plat fails to identify or correctly describe the land to be so platted or subdivided, or to show correctly on its face the tract of land intended or purported to be platted or subdivided, or is defective because the plat or subdivision and the description of land purported to be so platted or subdivided is inconsistent or incorrect, the registered land surveyor who prepared the plat may sign a certificate stating the nature of the error, omission, or defect and stating the information that surveyor believes corrects the error, supplies the omission, or cures the defect, referring, by correct book and page or document number, to the plat or subdivision and designating its name, if it has a name. The registered land surveyor shall date and sign the certificate.

SECTION 12. AMENDMENT. Section 40-50.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-50.1-17. Action by register of deeds. The register of deeds shall write in plain, legible letters, in black ink that is not ballpoint ink, across that part of a plat which has been vacated the word "vacated" and shall make a reference on the plat to the volume and page or document number in which the instrument of vacation is recorded.

SECTION 13. AMENDMENT. Section 47-19-10 of the North Dakota Century Code is amended and reenacted as follows:

47-19-10. Separate ~~books~~ records for grants and mortgages. Grants, absolute in terms, are to be recorded in one set of ~~books~~ records and mortgages in another.

SECTION 14. AMENDMENT. Section 47-29-04 of the North Dakota Century Code is amended and reenacted as follows:

47-29-04. Recording instrument incorporating master forms. Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of ~~such~~ the master form instrument or of a part thereof of the master form instrument, identified by its title as provided in section 47-29-01 and stating the date when it was recorded and the book and page or document number where it was recorded, preceded by the words "do not record" or "not to be recorded", and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in ~~such~~ a manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, ~~such~~ the matter ~~shall~~ may not be recorded by the register of deeds to whom the instrument is presented for recording; ~~in such case the~~ The register of deeds shall record only the mortgage or deed of trust apart from ~~such~~ the matter and ~~shall~~ is not be liable for so doing, ~~any other provisions of law to the contrary notwithstanding any other provision of law.~~

SECTION 15. AMENDMENT. Subsection 2 of section 52-04-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay ~~the same~~, the amount of contributions, interest, penalty, and costs that ~~may~~ accrue is a lien in favor of the state of ~~North Dakota~~ upon all ~~real or personal~~ property and all rights to property belonging to the employer. The lien attaches at the time the contributions, interest, or penalty becomes due, and continues until the liability is satisfied. To

preserve the lien against subsequent mortgages, purchasers for value and without notice of the lien, judgment creditors, and lienholders, job service North Dakota shall file with the register of deeds, in the county in which the property is located, a notice of the lien. The lien is effective from the time of filing of the notice. The register of deeds shall preserve the notice and endorse on it the day, hour, and minute when it was received. The register of deeds shall index the notice of lien in an appropriate index ~~book~~ record and record the notice of lien in the manner provided for recording real estate mortgages. The register of deeds shall accept the notice of lien for filing without payment of a fee by job service North Dakota. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the register of deeds a satisfaction of the lien. The register of deeds shall enter the satisfaction on the notice of lien, index the satisfaction in an appropriate index ~~book~~ record, and record the satisfaction in the manner provided for recording satisfactions of real estate mortgages. The register of deeds shall accept the satisfaction for filing without payment of a fee by job service North Dakota. The attorney general, upon request of job service North Dakota, may bring suit without bond, to foreclose the lien.

SECTION 16. REPEAL. Section 19-08-07 of the North Dakota Century Code is repealed.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 109

HOUSE BILL NO. 1406

(Representative Grosz)

REGISTER OF DEEDS FEES AND CERTIFICATES

AN ACT to amend and reenact sections 11-18-05 and 11-18-11 of the North Dakota Century Code, relating to register of deeds fees and recording certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-18-05 of 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, seven dollars for the first page and 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~~ first or last page of each instrument for the 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, seven dollars for the first page and three dollars for each additional page plus three dollars for each such additional 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, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars.
 - d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of two dollars.
2. For filing any non-central indexing system 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. For making a noncertified copy of any recorded instrument, a fee of not more than one dollar per instrument page.
 4. ~~For making a copy of any other filed instrument, one dollar for each five pages or portion thereof.~~ For making a copy of any filed non-central indexing system instrument, one dollar for each five pages or portion thereof. For making a certified copy of any non-central indexing system filed instrument, five dollars plus one dollar for each additional five pages or portion thereof.
 5. For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code central filing data base, the computerized central notice system or the computerized statutory liens data base, for receiving printouts, and for other services provided through the computerized system, the fee is the same as that provided in sections 41-09-42 and 41-09-43, as applicable.
 6. The register of deeds may establish procedures for providing access for duplicating records under the register of deeds' control. Such records include paper, photostat, microfilm, microfiche, and electronic or computer generated instruments created by governmental employees.
 7. Duplicate register of deeds' records stored off-site as a security measure are not accessible for reproduction.

⁹⁹ **SECTION 2. AMENDMENT.** Section 11-18-11 of the North Dakota Century Code is amended and reenacted as follows:

⁹⁹ Section 11-18-11 was also amended by section 5 of Senate Bill No. 2280, chapter 108.

11-18-11. Register of deeds to record or file instruments. When an instrument affecting the title to or creating a lien upon real estate within the county is numbered and entered in the reception ~~book~~ record and indexed, it ~~shall~~ must be recorded or filed as provided by law. ~~The register of deeds shall write or stamp, or cause to be written or stamped, at the beginning of a recorded instrument the words "document number" and shall add thereto the number stamped or written on the document. The register of deeds shall add, immediately after the record of such instrument, a certificate reciting that the instrument was filed in the register of deeds' office and giving the date and hour of filing. The register of deeds shall authenticate the certificate with an official signature, but need not affix the official seal thereto. The register of deeds shall provide recording information on the instrument as required by paragraph 4 of subdivision a of subsection 1 of section 11-18-05 and shall authenticate the information with an official signature and the official seal of the office as required by section 11-18-04.~~

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 110

HOUSE BILL NO. 1377

(Representatives Froseth, Sveen)
(Senator Redlin)

RECREATION SERVICE DISTRICT TERRITORY ANNEXATION

AN ACT to create and enact three new sections to chapter 11-28.2 of the North Dakota Century Code, relating to annexation of territory by a recreation service district; and to amend and reenact section 11-28.2-01 of the North Dakota Century Code, relating to annexation of territory by a recreation service district.

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 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.

The board of commissioners of a recreation service district may extend the boundaries of the district to property within or contiguous to the one-quarter mile

[402.34 meters] limit through the annexation procedures provided in sections 2 through 4 of this Act.

SECTION 2. A new section to chapter 11-28.2 of the North Dakota Century Code is created and enacted as follows:

Annexation by petition of owners. Upon a written petition signed by the owner of any property within one-quarter mile [402.34 meters] of the recreational waters of the area or to the areas of land dedicated to public use for recreational purposes or contiguous to that area and not embraced within the limits of the recreation service district the board of commissioners of the recreation service district may annex the territory to the district.

SECTION 3. A new section to chapter 11-28.2 of the North Dakota Century Code is created and enacted as follows:

Petition of owners - Annexation or exclusion. If the recreation service district annexes the area, it shall do so by resolution. When a copy of the resolution and an accurate map of the annexed area, certified by the chairman of the board of commissioners, are filed and recorded with the county register of deeds, the annexation becomes effective. An annexation is effective for the purpose of levying special assessments by the recreation service district on and after the first day of the next February.

SECTION 4. A new section to chapter 11-28.2 of the North Dakota Century Code is created and enacted as follows:

Annexation by resolution of district. The board of commissioners of a recreation service district may adopt a resolution to annex territory as follows:

1. The board shall adopt a resolution describing the property to be annexed.
2. The board shall publish the resolution and a notice of the time and place the board will meet to hear and determine the sufficiency of any written protests against the proposed annexation in the official newspaper of the county once each week for two consecutive weeks. The board shall mail a notice to the owner of each parcel of real property within the area to be annexed at the person's last known mailing address. The notice must inform landowners of the resolution, the time and place of hearing, and the requirement that protests must be filed in writing. The owners of any real property within the territory proposed to be annexed, within thirty days of the first publication of the resolution, may file written protests with the board protesting against the proposed annexation. No state-owned property may be annexed without the written consent of the state agency or department having control of the property. The board, at its next meeting after the expiration of the time for filing the protests, shall hear and determine the sufficiency of the protests.

3. In the absence of protests filed by the owners of more than one-fourth of the territory proposed to be annexed as of the date of the adoption of the resolution, the territory described in the resolution becomes a part of the district. When a copy of the resolution and an accurate map of the annexed area, certified by the chairman of the board, are filed and recorded with the county register of deeds, the annexation becomes effective. Annexation is effective for the purpose of special assessments levied by the recreation service district on and after the first day of the next February. If the owners of one-fourth or more of the territory proposed to be annexed protest, the board shall stop its pursuit of the annexation.

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 111

SENATE BILL NO. 2355

(Senators Solberg, Christmann, Kinnoin)
(Representatives Brusegaard, Kempenich, Solberg)

FARM AND RANCH ZONING

AN ACT to amend and reenact sections 11-33-02 and 58-03-11 of the North Dakota Century Code, relating to zoning regarding farming and ranching.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-33-02 of the North Dakota Century Code is amended and reenacted as follows:

11-33-02. Board of county commissioners to designate districts.

1. For any or all of the purposes designated in section 11-33-01, the board of county commissioners may divide by resolution divide all or any parts of the county, subject to ~~the provisions of~~ section 11-33-20, into districts of such number, shape, and area as may be ~~deemed~~ determined necessary, and ~~may~~ likewise may enact suitable regulations to carry out the purposes of this chapter. These regulations ~~shall~~ must be uniform in each district, but the regulations in one district may differ from those in other districts. ~~No~~ A regulation or restriction, ~~however, shall~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming: ~~The provisions of this or ranching.~~ For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
2. A board of county commissioners may regulate the nature and scope of concentrated feeding operations permissible in the county; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
3. A regulation may not preclude the development of a concentrated feeding operation in the county. A regulation addressing the development of a concentrated feeding operation in the county may set reasonable standards, based on the size of the operation, to govern its location.
4. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than

six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

5. A board of county commissioners may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
6. This chapter ~~shall~~ does not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

SECTION 2. AMENDMENT. Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

58-03-11. Establishment of zoning districts - Limitation - Scope of zoning regulations and restrictions.

1. For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts.
2. ~~No~~ A regulation or restriction; ~~however,~~ may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming: ~~The provisions of sections~~ or ranching. For purposes of this section, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include producing timber or forest products, nor does the term include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
3. A board of township supervisors may regulate the nature and scope of concentrated feeding operations permissible in the township; however, if a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
4. A regulation may not preclude the development of a concentrated feeding operation in the township. A regulation addressing the development of a concentrated feeding operation in the township may set reasonable standards, based on the size of the operation, to govern its location.

5. For purposes of this section, "concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle. For purposes of this section, "livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.
6. A board of township supervisors may not prohibit, through regulation, the reasonable diversification or expansion of a farming or ranching operation.
7. Sections 58-03-11 through 58-03-15 may do not be construed to include any power relating to the establishment, repair, and maintenance of highways or roads.

Approved April 20, 1999

Filed April 20, 1999

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 112

HOUSE BILL NO. 1304

(Representatives L. Thoreson, B. Thoreson, Nottestad, Ekstrom)
(Senator Lee)

INMATE PLACEMENT AND PROGRAMS

AN ACT to amend and reenact sections 12-44.1-09, 12-44.1-18.2, and subsection 4 of section 39-08-01 of the North Dakota Century Code, relating to inmate placement and programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-09 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-09. Housing of inmates. Each correctional facility shall adopt a classification system for inmates to provide for the security, safety, and order of the correctional facility and for the safety and security of the community. If the correctional facility has adopted a classification system approved by the department of corrections and rehabilitation, the correctional facility is not required to comply with subsections 3, 4, and 5 of this section. In grade one and grade two correctional facilities and, where practicable, in grade three correctional facilities, the following groups of inmates must be housed separately from each other:

1. Female inmates from male inmates.
2. Juveniles from adults.
3. Persons detained for hearing or trial from inmates under sentence of imprisonment, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
4. Persons detained for hearing or trial or under sentence of imprisonment from persons otherwise detained by order of the court, unless authorized to be housed together by the administrator for security, order, or rehabilitation.
5. Inmates who may have special needs as determined by the correctional facility or whose behavior may present a serious threat to the safety or security of the correctional facility, the staff, the inmate, or other inmates.

SECTION 2. AMENDMENT. Section 12-44.1-18.2 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-18.2. Work release program - Room and board costs to be paid by inmate. Any inmate who participates in a work release program shall pay the correctional facility for the room and board costs incurred by the inmate while confined in the correctional facility, residential halfway house, or similar alternative facility. The administrator shall determine the amount of meal and lodging costs to be paid by the inmate. The amount to be paid by the inmate while confined in a correctional facility may not exceed ~~ten~~ fifteen dollars per day or the funds earned by the inmate, whichever is less. The amount to be paid by the inmate while placed in a residential halfway house or similar alternative facility may not exceed the actual cost per day or the funds earned by the inmate, whichever is less.

¹⁰⁰ **SECTION 3. AMENDMENT.** Subsection 4 of section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least four days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
 - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment or placement in a minimum security facility may be suspended in any of the following instances:
 - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.

¹⁰⁰ Section 39-08-01 was also amended by section 1 of House Bill No. 1131, chapter 346.

- (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or placement in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 113

SENATE BILL NO. 2360

(Senators Wardner, Krebsbach)
(Representatives D. Johnson, Klein)

STATE OFFICER BOND REQUIREMENT ELIMINATED

AN ACT to amend and reenact sections 12-46-05, 12-47-07, 15-02-01, 15-02-04, 18-01-01, 20.1-02-06, 20.1-02-08, 25-01-04, 27-03-02, 37-15-07, 37-18-07, subsection 3 of section 37-18.1-03, sections 39-03-06, 44-03-01, 49-01-03, 54-11-07, 54-23.3-04, 54-44-03, subsection 2 of section 54-52-04, sections 55-02-01.1, 61-03-02, 65-02-02, and 65-04-30 of the North Dakota Century Code, relating to bonds required of state officers; and to repeal sections 6-01-12, 15-12-06, 20.1-02-12, 27-04-02, 44-01-13, 54-06-11, 54-09-06, 54-10-03, 54-11-14, 54-18-08, and 57-01-01 of the North Dakota Century Code, relating to bonds required of state officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-46-05 of the North Dakota Century Code is amended and reenacted as follows:

12-46-05. Oath and bond of superintendent. The superintendent, before entering upon the duties of ~~his~~ the office, shall take the oath prescribed for civil officers and furnish a bond in the penal sum of ten thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers and employees. The bond and oath shall must be filed and retained in the office of the state treasurer.

SECTION 2. AMENDMENT. Section 12-47-07 of the North Dakota Century Code is amended and reenacted as follows:

12-47-07. Qualification of warden, officers, and employees. The warden and deputy wardens, before entering upon the duties of their offices, shall take the oath prescribed for civil officers and furnish a bond in the penal sum of ten thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers and employees. The bond and oath shall must be filed and retained in the office of the state treasurer. Each of the other officers and employees of the penitentiary, before entering upon the duties of ~~his~~ the appointment, shall take and subscribe the same oath, which shall must be filed with and retained by the warden.

SECTION 3. AMENDMENT. Section 15-02-01 of the North Dakota Century Code is amended and reenacted as follows:

15-02-01. Commissioner of university and school lands - Appointment - Oath and bond. The board of university and school lands shall appoint a commissioner of university and school lands. All of the official acts of the commissioner are subject to the approval and supervision of the board. Before entering upon ~~his~~ the duties of the commissioner, the commissioner shall take the oath prescribed for civil officers and shall furnish a bond in the penal sum of ten thousand dollars.

SECTION 4. AMENDMENT. Section 15-02-04 of the North Dakota Century Code is amended and reenacted as follows:

15-02-04. Deputy commissioner - Appointment - Oath - Bond. The commissioner, with the consent of the board, may appoint a deputy. Before entering upon any ~~of his~~ duties the deputy shall take and subscribe the oath of office required by law for civil officers and ~~shall furnish to the state a bond in the penal sum of five thousand dollars.~~

SECTION 5. AMENDMENT. Section 18-01-01 of the North Dakota Century Code is amended and reenacted as follows:

18-01-01. Appointment of fire marshal - Appointment and salaries of deputies and assistants - Bonds - Budget. The attorney general shall appoint the state fire marshal and supervise the operation of the state fire marshal department. The state fire marshal shall manage the fire marshal department and shall perform the duties imposed on the state fire marshal by ~~the provisions of~~ this chapter.

The state fire marshal shall appoint such deputies and other employees as the state fire marshal deems necessary to carry out ~~the provisions of~~ this chapter within the limits of legislative appropriations ~~therefor~~.

Before entering upon their duties, the state fire marshal and each deputy appointed under this section shall ~~give a bond to the state of North Dakota in the penal sum of five thousand dollars, conditioned for the faithful discharge of their duties and shall take and subscribe the constitutional oath of office and file the same oath~~ in the office of the secretary of state.

The fire marshal department must be operated in conjunction with the bureau of criminal investigation. The budget for the fire marshal department must be submitted as part of the attorney general's budget.

SECTION 6. AMENDMENT. Section 20.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-06. Deputy director - Appointment, removal, oath, bond, reports. The director shall appoint, and may remove at pleasure, a deputy director who is under the director's direct control and supervision. The deputy, within ten days after the date of that person's appointment, shall take and file the oath prescribed for civil officers and ~~furnish a bond in the penal sum of five thousand dollars. The bond must conform to and must be filed in accordance with the provisions of law applicable to the bonds of state officers.~~ The oath must be filed in the office of the secretary of state. The deputy director shall make monthly and annual reports to the director in the manner required by the director.

SECTION 7. AMENDMENT. Section 20.1-02-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-08. Bond and oath Oath of chief game warden. The chief game warden, within ten days of appointment, shall take the oath prescribed for civil officers and file it with the secretary of state. ~~The chief game warden shall furnish a bond in the penal sum of five thousand dollars.~~

SECTION 8. AMENDMENT. Section 25-01-04 of the North Dakota Century Code is amended and reenacted as follows:

25-01-04. Superintendent of each institution to qualify. The superintendent of each of the institutions mentioned in this chapter, before entering upon the duties of office, shall take the oath prescribed for civil officers and ~~shall furnish a bond in~~

such sum as may be fixed by the supervising officer which must conform to the provisions of law applicable to the bonds of state officers and employees. Each such bond must be filed by the supervising officer in the office of the secretary of state.

SECTION 9. AMENDMENT. Section 27-03-02 of the North Dakota Century Code is amended and reenacted as follows:

27-03-02. Clerk of supreme court - Oath and bond - Deputy. The clerk of the supreme court, before entering upon ~~his~~ the clerk's duties, shall qualify by taking the oath prescribed for civil officers ~~and by giving an official bond in the penal sum of three thousand dollars.~~ Such The clerk may appoint a deputy who shall take and subscribe the oath prescribed for civil officers and file the same in the supreme court. The clerk is responsible for the acts of ~~his~~ the deputy.

SECTION 10. AMENDMENT. Section 37-15-07 of the North Dakota Century Code is amended and reenacted as follows:

37-15-07. Commandant of veterans' home - Appointment - Qualifications - Term - Salary - Bond. The appointment, qualifications, term of office, and salary of the commandant of the veterans' home must be as prescribed in section 37-18.1-03. ~~The commandant must be bonded through the state bonding fund in the amount as determined by the administrative committee on veterans' affairs, except that the amount of the bond must be at least five thousand dollars.~~

SECTION 11. AMENDMENT. Section 37-18-07 of the North Dakota Century Code is amended and reenacted as follows:

37-18-07. Commissioner - Appointment - Qualifications - Term - Salary - Bond. The appointment, qualifications, term of office, and salary of the commissioner must be as prescribed in section 37-18.1-03. The commissioner must be ~~bonded through the state bonding fund in the amount as determined by the administrative committee on veterans' affairs, provided that such bond must be in a minimum amount of five thousand dollars.~~ He must be allowed such amounts for travel, clerkhire, and expenses as may be prescribed from time to time by legislative appropriations.

SECTION 12. AMENDMENT. Subsection 3 of section 37-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The committee shall appoint the commandant of the veterans' home and the commissioner of the department of veterans' affairs. Individuals appointed to these positions must be bona fide residents of the state, and must qualify as a veteran as defined in section 37-01-40. Their terms of office are for two years, commencing on July 1, 1971, and on every second anniversary thereof. The committee shall determine the salaries paid to the commandant of the veterans' home and the commissioner of the department of veterans' affairs within the limits of legislative appropriation. ~~Both officers must be bonded through the state bonding fund in the sum of five thousand dollars.~~ The commandant of the veterans' home and the commissioner of veterans' affairs shall serve as the executive secretary for their respective subcommittees. The commandant and the commissioner have no vote in the affairs of the subcommittees.

SECTION 13. AMENDMENT. Section 39-03-06 of the North Dakota Century Code is amended and reenacted as follows:

39-03-06. Oath and bond required of superintendent, assistant superintendent, and patrolmen. The superintendent, assistant superintendent, and each patrolman, before entering upon the performance of the person's duties, shall take and file the oath prescribed by law for state officers and ~~must be bonded in the state bonding fund for the sum of two thousand dollars.~~

¹⁰¹ **SECTION 14. AMENDMENT.** Section 44-03-01 of the North Dakota Century Code is amended and reenacted as follows:

44-03-01. Deputies may be appointed by certain officers. The secretary of state, state auditor, state treasurer, superintendent of public instruction, commissioner of insurance, commissioner of agriculture, commissioner of labor, district assessor, and city assessor each may appoint a deputy ~~for whose acts as such he shall be responsible. Each officer required to give a bond may require a bond from any deputy appointed by him. Any such bond must be in the penal sum of not more than half the penal sum of the appointing officer's own bond and may be retained by the officer for his own protection. Such~~ The appointment must be in writing and is revocable in writing at the pleasure of the principal, and ~~such the~~ the appointment and revocation must be filed as the ~~bond and~~ oath of the principal ~~are~~ is filed.

SECTION 15. AMENDMENT. Section 49-01-03 of the North Dakota Century Code is amended and reenacted as follows:

49-01-03. Oath and bond of public service commissioners. Each commissioner before entering upon the duties of ~~his~~ the office shall take the oath required of civil officers and ~~shall be bonded in the sum of ten thousand dollars as other state officers are bonded.~~

SECTION 16. AMENDMENT. Section 54-11-07 of the North Dakota Century Code is amended and reenacted as follows:

54-11-07. Suspension of treasurer by governor - Appointment. When a certificate is made to the governor by the state auditor under ~~the provisions of the preceding~~ section 54-11-06, the governor, with the state auditor and the commissioner of banking and financial institutions, ~~thereupon~~ shall examine the books, papers, and all matters connected with the office of the state treasurer so suspended. If it appears to the governor, state auditor, and commissioner of banking and financial institutions on ~~such~~ examination that the state treasurer has embezzled or converted to ~~his~~ the treasurer's own use the public moneys, or has been negligent in keeping ~~his~~ the books, or in taking care of public moneys, the governor on the certificate of the state auditor and the commissioner of banking and financial institutions to that effect may remove the state treasurer and appoint another person to fill the place of the suspended state treasurer. The person so appointed shall ~~execute an official bond and~~ enter upon the office of state treasurer as provided by law. The governor shall report ~~all his acts done in removing the~~ removal of the state treasurer to the next succeeding legislative assembly. The state treasurer so appointed shall hold ~~his~~ the office until the suspended state treasurer is reinstated or ~~his~~ a successor is elected and qualified.

¹⁰¹ Section 44-03-01 was also amended by section 32 of Senate Bill No. 2013, chapter 35.

SECTION 17. AMENDMENT. Section 54-23.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.3-04. Director - Powers and duties. The director of the department of corrections and rehabilitation has the following powers and duties:

1. To manage and control all institutions and programs within the department and to administer and enforce the laws with which the department is charged.
2. To promote a unified criminal justice system and develop a statewide correctional philosophy in cooperation with the courts, law enforcement, and other entities in the criminal justice system.
3. To develop necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation and to recognize their special needs.
4. To develop, maintain, and revise as required a comprehensive master plan for the state's correctional system which must indicate the system's needs and resources.
5. To establish policies and procedures necessary to carry out the responsibilities of the department.
6. To organize the department into an adult services division, a juvenile services division, and such other divisions that will enable it to function most effectively and efficiently.
7. To exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules.
8. To employ and remove the director of the division of juvenile services, the director of the division of adult services, and other division directors and personnel who may be deemed necessary by the director of the department. Until the director of the department of corrections and rehabilitation has been granted the full-time equivalent positions within the department's budget for the division director positions, or when the positions are vacant, the responsibilities of these positions must be assumed by the director of the department of corrections and rehabilitation or by the director's designee.
9. To delegate authority to subordinates as necessary and appropriate, clearly delineating the delegated authority and limitations.
10. To promote the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.
11. ~~To furnish a bond as approved by the governor and to require bonds from department employees who may be charged with the custody or control of any money or property belonging to the state, and who are not otherwise required by law to give a bond. The bonds must conform to the provisions of law applicable to the bonds of state officers and~~

~~employees. Each such bond must be filed in the office of the secretary of state.~~

- ~~42.~~ 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. 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.
- ~~43.~~ 12. To sell, lease, or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and to sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions and provisions:
 - a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.
 - f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.

44. 13. To provide meals at a fair value or without a charge to officers and employees of the department as required by their job assignments.
45. 14. To accept property forfeited or seized in accordance with law.
46. 15. 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.
47. 16. To collect the costs of any presentence investigation and report incurred under subsection 11 of section 12.1-32-02, giving due consideration to the financial obligations and resources of the defendant.

SECTION 18. AMENDMENT. Section 54-44-03 of the North Dakota Century Code is amended and reenacted as follows:

54-44-03. Director of the office of management and budget. There must be a director of the office of management and budget who must be appointed by and serve at the will of the governor. The salary of the director must be set by the governor within the limits of the amount appropriated for salaries by the legislative assembly, and the director and other employees of the office must be reimbursed for expenses incurred in carrying out the duties of their office at the same rate and in the same manner as other state officials. The director is empowered to adopt rules, not inconsistent with law or rules established by the governor, for the administration of the office of management and budget, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining thereto. ~~He~~ The director is empowered to set up such divisions or other internal organization within the office that ~~he shall deem~~ the director determines necessary in order to efficiently carry out the duties, powers, and responsibilities of the office.

~~The director of the office of management and budget shall execute an official bond in the sum of one hundred thousand dollars.~~

SECTION 19. AMENDMENT. Subsection 2 of section 54-52-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The board shall appoint an executive director to serve at its discretion. The executive director shall ~~be bonded by the state bonding fund in the amount required by the board and shall~~ perform such duties as assigned by the board.

SECTION 20. AMENDMENT. Section 55-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01.1. Term of office - Vacancy - Salary and expenses - Bond. The superintendent shall serve at the pleasure of the state historical board and until his a successor is appointed and qualified. In case of vacancy by death, removal, resignation, or any other cause, the board shall fill the vacancy by appointment. The salary must be determined by the board within the limits of legislative

appropriation and the superintendent is entitled to compensation for his expenses incurred while in the discharge of his official duties, paid in the same manner and amounts as other state officials are paid, from funds available to the board. ~~Before entering upon his duties, the superintendent shall furnish a bond in the penal sum of ten thousand dollars.~~

SECTION 21. AMENDMENT. Section 61-03-02 of the North Dakota Century Code is amended and reenacted as follows:

61-03-02. Oath and bond of state engineer. Before entering upon the duties of office, the state engineer shall take the oath prescribed for civil officers ~~and shall furnish a bond in the penal sum of five thousand dollars, which shall conform to the provisions of law applicable to the bonds of state officers.~~

SECTION 22. AMENDMENT. Section 65-02-02 of the North Dakota Century Code is amended and reenacted as follows:

65-02-02. Oath of office - Bond. Before commencing to perform the duties of director of the bureau, the director shall file an oath of office in the usual form ~~and must be bonded by the state bonding fund in the sum of five thousand dollars for the faithful discharge of the director's duties and the proper accounting for all moneys received by the director.~~

SECTION 23. AMENDMENT. Section 65-04-30 of the North Dakota Century Code is amended and reenacted as follows:

65-04-30. State treasurer is custodian of fund - Deposit - Disbursement on vouchers - Additional bond of treasurer. The state treasurer ~~shall be~~ is the custodian of the fund and all payments of awards of the bureau ~~therefrom~~ for disbursements other than travel and administrative expenses ~~shall~~ must be paid by the state treasurer upon warrant-checks authorized and prepared by the bureau. Warrants drawn upon the fund and paid by the state treasurer ~~shall~~ must be returned to the bureau and ~~shall~~ must be kept in the files ~~thereof~~ of the bureau. The bureau shall submit to the office of management and budget once each month a monthly financial statement showing the receipts, disbursements, investments, and status of the fund. The treasurer may deposit any portion of the fund not needed for immediate use in the manner and subject to the requirements prescribed by law for the deposit by ~~such~~ the treasurer of state funds. Any interest earned by any portion of the fund which is deposited by the state treasurer under ~~the provisions of~~ this section ~~shall~~ must be collected by the state treasurer and placed to the credit of the fund. ~~The state treasurer shall give a separate and additional bond in such amount as may be fixed by the governor conditioned for the faithful performance of the state treasurer's duties as custodian of the fund.~~

¹⁰² **SECTION 24. REPEAL.** Sections 6-01-12, 15-12-06, 20.1-02-12, 27-04-02,

¹⁰² Section 54-10-03 was amended by section 13 of Senate Bill No. 2130, chapter 106.

44-01-13, 54-06-11, 54-09-06, 54-10-03, 54-11-14, 54-18-08, and 57-01-01 of the North Dakota Century Code are repealed.

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 114

SENATE BILL NO. 2133

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

PENITENTIARY CONTRABAND AND ESCAPES

AN ACT to amend and reenact sections 12-47-21 and 12-47-34 of the North Dakota Century Code, relating to contraband at the penitentiary and escapes from the penitentiary; and to repeal sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code, relating to service of process at the penitentiary, oath and bond of the warden, inmates' food, beds, and clothing at the penitentiary, and warrants for cash payments to inmates at the penitentiary.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-21 of the North Dakota Century Code is amended and reenacted as follows:

12-47-21. Alcoholic beverages and controlled substances prohibited - Physician's orders - Use of tobacco - Weapons and firearms - Penalty.

1. It is unlawful for any person to ~~deliver or administer, whether or not for a consideration, any alcoholic beverage or~~ willfully:
 - a. Manufacture or possess with intent to manufacture or deliver, a controlled substance, on or within any premises under the control of the department of corrections and rehabilitation or any of its divisions.
 - b. Deliver a controlled substance to any inmate of the penitentiary, or to any other person for redelivery to an inmate of the penitentiary. This subsection does not apply to the possession, delivery, or administration of controlled substances or alcoholic beverages by the penitentiary pharmacy or agent of the penitentiary pharmacy or in accordance with the orders or prescription of a duly licensed physician and the approval, except in emergency circumstances, of the warden. Any person who violates this subsection is guilty of a class A felony.
2. ~~No~~ It is unlawful for a penitentiary inmate may to possess any controlled substance or alcoholic beverage unless the substance or beverage was delivered to the inmate or was possessed except in accordance with the prescription or orders of a licensed physician. It is unlawful for a penitentiary inmate to possess alcohol or alcoholic beverages. It is unlawful for a penitentiary inmate to possess any tobacco except when the warden has authorized possession of tobacco for religious purposes or when on authorized release from the penitentiary. Any penitentiary inmate who violates this subsection with respect to:
 - a. Possession of a controlled substance is guilty of a class B felony.

- b. Possession of alcohol or alcoholic beverages is guilty of a class A misdemeanor.
 - c. Possession of tobacco is guilty of a class B misdemeanor.
 3. Any person, other than an official or employee of the penitentiary, who violates subsection 4 by delivering or administering a controlled substance is guilty of a class B felony. Any official or employee of the penitentiary who violates subsection 4 by delivering or administering a controlled substance is guilty of a class A felony. It is unlawful for any person to willfully deliver alcohol or alcoholic beverages to a penitentiary inmate. It is unlawful for any person to willfully deliver tobacco to an inmate except when the warden has authorized delivery of tobacco for religious purposes or when the inmate is on an authorized release from the penitentiary. Any person who violates this subsection 4 by delivering:
 - a. Delivery of alcohol or alcoholic beverages to a penitentiary inmate is guilty of a class A misdemeanor.
 - b. Delivery of tobacco to a penitentiary inmate is guilty of a class B misdemeanor.
 4. It is unlawful for any person other than a penitentiary inmate to willfully possess a controlled substance on or within any property under the control of the department of corrections and rehabilitation or any of its divisions except when the person is an authorized agent of the penitentiary pharmacy or except in accordance with the orders or prescription of a licensed physician. Any person who violates this subsection 2 by possessing a controlled substance is guilty of a class B felony. Any person who violates subsection 2 by possessing alcoholic beverages is guilty of a class A misdemeanor.
 5. It is unlawful for a penitentiary inmate to willfully procure, make, or possess any object, including a shard made of any material or any weapon, firearm, ammunition, or explosive material, intended to be used for an assault on another person or to damage property. Any penitentiary inmate who violates this subsection with respect to:
 - a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.
 - b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01, or explosive material is guilty of a class A felony.
 6. It is unlawful for any person to deliver or provide to a penitentiary inmate any object intended to be used for an assault on another person or to damage penitentiary property. Any person who violates this subsection with respect to:
 - a. A shard or weapon that is not a dangerous weapon or firearm as defined in section 62.1-01-01 is guilty of a class B felony.

- b. Ammunition, a knife of any length, a weapon that is a dangerous weapon or firearm as defined in section 62.1-01-01 or is an explosive or destructive device is guilty of a class A felony.
- 7. As used in this section, "controlled substance" is as defined in subsection 6 of section 19-03.1-01 and includes counterfeit substances as defined in subsection 7 of section 19-03.1-01. As used in this section, "willfully" is as defined in section 12.1-02-02. As used in this section, "alcohol" and "alcoholic beverage" are as defined in section 5-01-01. As used in this section, "tobacco" means any form of tobacco, including cigarettes, cigars, snuff, or tobacco in any form in which it may be used for smoking or chewing.

SECTION 2. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is amended and reenacted as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward - Use of firearms.

- 1. The warden, with the approval of the director of the department of corrections and rehabilitation, may adopt measures necessary for the detection and capture of offenders escaping from the custody of the warden or the department of corrections and rehabilitation. If an offender in the custody of the warden or the department of corrections and rehabilitation escapes, the warden may use all lawful means for the apprehension of the offender. The warden may offer a reward not to exceed one thousand dollars and not less than one hundred dollars for information leading to apprehension of an offender who has escaped from the custody of the warden or the department of corrections and rehabilitation.
- 2. The warden may authorize correctional officers trained in the use of firearms:
 - a. To carry firearms when in the course of their duties on penitentiary premises.
 - b. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, when transporting offenders in the custody of the warden or the department of corrections and rehabilitation.
 - c. To carry firearms, including keeping and carrying loaded firearms in motor vehicles, for the prevention of escapes or for the apprehension of offenders who have escaped from the custody of the warden or the department of corrections and rehabilitation.
- 3. Sections 62.1-02-05, 62.1-02-10, and 62.1-03-01 do not apply to the possession and use of firearms by authorized and trained correctional officers acting in the course of their employment under this section.

SECTION 3. REPEAL. Sections 12-47-03, 12-47-07, 12-47-19, 12-47-20, and 12-47-32 of the North Dakota Century Code are repealed.

CHAPTER 115

SENATE BILL NO. 2249

(Senators W. Stenehjem, Lyson)
(Representatives Hawken, Nottestad)

SENTENCE REDUCTION FOR GOOD CONDUCT

AN ACT to amend and reenact section 12-54.1-01 of the North Dakota Century Code, relating to sentence reduction for good or meritorious conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Performance-based sentence reduction.

1. Except as provided under section 12.1-32-09.1, offenders sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

2. The presiding judge of a judicial district in which a correctional facility is located, after consultation with the other judges in the district, may authorize the facility administrator to provide for sentence reductions based upon performance criteria established through the administrator. The criteria must be substantially similar to the performance criteria established by the penitentiary. Except as provided under section 12.1-32-09.1, offenders sentenced to the facility are eligible to earn sentence reductions based upon the performance criteria. While incarcerated in a correctional facility, an inmate may earn five days good time per month except for any sentence where the incarceration time is thirty days or less.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 116**SENATE BILL NO. 2185**

(Senators Watne, Lyson, W. Stenehjem)

**OUT-OF-STATE SUPERVISION COMPACT
VIOLATIONS**

AN ACT to create and enact a new section to chapter 12-56 of the North Dakota Century Code, relating to the violation by parolees and probationers of the interstate compact for out-of-state supervision; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-56 of the North Dakota Century Code is created and enacted as follows:

Violation of compact - Penalty. An individual who is on parole or probation in another state, who is present in this state without the permission of the officer of this state designated under subsection 5 of section 12-56-01, and who does not leave this state within seven days after being notified in writing by a law enforcement officer that the individual may not remain in this state without the permission of the designated officer is guilty of a class C felony. Within twenty-four hours after a law enforcement officer has notified an individual that the individual may not remain within the state without the permission of the designated officer, the law enforcement officer shall report the notification to the designated officer. An individual who is on parole or probation in another state may not remain in this state without the permission of the officer of this state designated under subsection 5 of section 12-56-01. In a prosecution for an offense under this section, an individual's good-faith belief that the individual received permission to be present in this state is an affirmative defense if the individual acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which the individual is on parole or probation. This defense is not available to a person who remains present in this state after being notified in writing by the designated officer of this state that the individual does not have permission to be present.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 117

SENATE BILL NO. 2087

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

PAROLE BOARD MEMBERSHIP, MEETINGS, AND COMPENSATION

AN ACT to amend and reenact sections 12-59-01, 12-59-02, subsection 2 of section 12-59-15, and subsection 17 of section 12.1-34-02 of the North Dakota Century Code, relating to membership, meetings, and compensation of the parole board, parole revocation proceedings, and fair treatment standards for victims and witnesses of crimes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-01 of the North Dakota Century Code is amended and reenacted as follows:

12-59-01. State parole board - Membership. The state parole board ~~shall consist~~ consists of ~~three~~ six members, who ~~shall~~ must be qualified electors of the state, appointed by the governor for terms of three years, arranged so that the term of ~~one member shall~~ two members must expire on December thirty-first of each year. One of the members ~~shall~~ must be a person experienced in law enforcement, which may include experience as a prosecuting attorney, one ~~shall~~ must be a licensed attorney, and ~~one shall~~ four must be a ~~person~~ persons qualified by special experience, education, or training. ~~Members shall be removable by the~~ The governor may only remove a member of the parole board for disability, inefficiency, neglect of duty, or malfeasance in office.

SECTION 2. AMENDMENT. Section 12-59-02 of the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules. The ~~board~~ governor shall ~~organize by selecting a~~ appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision of the parole board. Members are entitled to be compensated at the rate of sixty-two dollars and fifty cents per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, ~~shall be~~ is the clerk for the parole board.

SECTION 3. AMENDMENT. Subsection 2 of section 12-59-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parolee is in the custody of a law enforcement agency parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.

SECTION 4. AMENDMENT. Subsection 17 of section 12.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

17. Participation in parole board and pardon decision. Victims may submit a written statement for consideration by the parole board, the governor, or the pardon advisory board, if one has been appointed, prior to the parole board, the governor, or the pardon advisory board taking any action on a defendant's request for parole or pardon. Victims of violent crimes may at the discretion of the parole board, the governor, or the pardon advisory board personally appear and address the parole board, the governor, or the pardon advisory board. Notice If the offender will make a personal appearance, notice must be given by the parole board or pardon clerk informing the victim of the pending review and of the victim's rights under this section. The victim must be provided notice of the decision of the parole board or of the governor and the recommendations of the pardon advisory board, if any, and, if applicable, notice of the date of the prisoner's release on parole or the prisoner's pardon, conditional pardon, reprieve, commutation, or remission of fine. Notice must be given within a reasonable time after the parole board or the governor makes a decision but in any event before the parolee's or pardoned prisoner's release from custody.

SECTION 5. EMERGENCY. Sections 1 and 2 of this Act are declared to be an emergency measure.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 118**SENATE BILL NO. 2058**
(Senators Watne, Krebsbach)
(Representatives Delmore, Wentz)**CRIMINAL HISTORY RECORD CHECK FEE**

AN ACT to amend and reenact section 12-60-16.9 of the North Dakota Century Code, relating to the fee for a criminal history record check.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.9 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of twenty dollars for a each record check conducted. The bureau shall waive the fee for a noncriminal any criminal justice agency that is not also a or court, and shall impose a fee of three dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 119

SENATE BILL NO. 2298

(Senator Nething)

PEACE OFFICER STANDARDS, TRAINING, AND LICENSING

AN ACT to amend and reenact section 12-63-01, subsection 2 of section 12-63-12, and section 12-63-14 of the North Dakota Century Code, relating to peace officer standards, training, and licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. In sections 12-63-01 through 12-63-14, unless the context or subject matter otherwise requires:

1. "Board" means the peace officer standards and training board.
2. "Director" means the director of the division.
3. "Division" means the ~~criminal justice training and statistics division~~ training section of the bureau of criminal investigation.
4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 2. AMENDMENT. Subsection 2 of section 12-63-12 of the North Dakota Century Code is amended and reenacted as follows:

2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.

SECTION 3. AMENDMENT. Section 12-63-14 of the North Dakota Century Code is amended and reenacted as follows:

12-63-14. Penalty. ~~Violation of sections 12-63-01 through 12-63-14~~ Any person who willfully violates this chapter is guilty of a class B misdemeanor.

Approved March 18, 1999

Filed March 19, 1999

CRIMINAL CODE

CHAPTER 120

SENATE BILL NO. 2211

(Senators Traynor, W. Stenehjem, Watne)
(Representative Mahoney)

BODILY INJURY DEFINITION

AN ACT to amend and reenact section 12.1-01-04 of the North Dakota Century Code, relating to the definition of types of bodily injury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰³ **SECTION 1. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. (Effective until January 1, 2000) General definitions. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, the temporary court of appeals, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

¹⁰³ Section 12.1-01-04 was also amended by section 1 of House Bill No. 1076, chapter 277.

7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
9. Repealed by S.L. 1975, ch. 116, § 33.
10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
11. "Force" means physical action.
12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.
14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
15. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
18. "Local" means of or pertaining to any political subdivision of the state.
19. Repealed by S.L. 1975, ch. 116, § 33.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.
25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
26. "Property" includes both real and personal property.
27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
28. "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.

29. "Serious bodily injury" means bodily injury ~~which~~ that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, ~~or~~ permanent loss or impairment of the function of any bodily member or organ, or a bone fracture.
30. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
31. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ; ~~or a bone fracture~~.
32. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
33. "Writing" includes printing, typewriting, and copying.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

(Effective January 1, 2000) General definitions. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit

breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.

9. Repealed by S.L. 1975, ch. 116, § 33.
10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
11. "Force" means physical action.
12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.
14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
15. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the

law and to conduct or engage in investigations or prosecutions for violations of law.

18. "Local" means of or pertaining to any political subdivision of the state.
19. Repealed by S.L. 1975, ch. 116, § 33.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government which may lawfully own property in this state.
25. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
26. "Property" includes both real and personal property.
27. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
28. "Risk assessment" means an initial phase with a secondary process approved by the department of human services for the evaluation of the likelihood that a person who committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of human services shall perform the secondary process of the risk assessment.
29. "Serious bodily injury" means bodily injury ~~which~~ that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, ~~or~~ permanent loss or impairment of the function of any bodily member or organ, or a bone fracture.

30. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
31. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ; ~~or a~~ ~~bone fracture.~~
32. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
33. "Writing" includes printing, typewriting, and copying.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 121**HOUSE BILL NO. 1184**
(Representative Porter)**LAW ENFORCEMENT APPLICATIONS AND REPORTS**

AN ACT to provide for questions on an application for a position as a law enforcement officer; and to amend and reenact section 12.1-11-03 of the North Dakota Century Code, relating to giving false information or a false report to law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-11-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-11-03. False reports information or report to law enforcement officers or security officials. A person is guilty of a class A misdemeanor if ~~he~~ that person:

1. Gives false information or a false report to a law enforcement officer ~~with intent to falsely implicate another~~ which that person knows to be false, and the information or report may interfere with an investigation or may materially mislead a law enforcement officer; or
2. Falsely reports to a law enforcement officer or other security official the occurrence of a crime of violence or other incident calling for an emergency response when ~~he~~ that person knows that the incident did not occur. "Security official" means a public servant responsible for averting or dealing with emergencies involving public safety.

SECTION 2. Law enforcement officer job application. Every applicant for a position as a law enforcement officer for any state or political subdivision agency must be asked in any written application for that position whether that applicant has ever pled or been found guilty of a felony including a felony charge that was later dismissed under a deferred imposition of sentence.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 122

SENATE BILL NO. 2362

(Senators Kilzer, O'Connell, Wanzek)
(Representatives Boehm, Kerzman)

ASSISTED SUICIDE PREVENTION

AN ACT to create and enact two new sections to chapter 12.1-16 of the North Dakota Century Code, relating to the prevention of assisted suicide.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-16 of the North Dakota Century Code is created and enacted as follows:

Civil damages. Any person given standing under subsection 1 of section 12.1-16-05, except the health care provider, may maintain a claim for relief for compensatory and punitive damages against any person who violates or attempts to violate section 12.1-16-04. Prior knowledge of or consent to the violation by the plaintiff does not preclude a claim for relief under this section. This section does not preclude any claim under any other provision of law.

SECTION 2. A new section to chapter 12.1-16 of the North Dakota Century Code is created and enacted as follows:

Suspension or revocation of license of health care provider. If the person who assists in a suicide in violation of section 12.1-16-04 is a person who is licensed, certified, or otherwise authorized by title 43 to administer health care in the ordinary course of business or professional practice, the licensing agency that issued the license or certification to that person may suspend or revoke the license or certification of that person upon receipt of:

1. A copy of the record of criminal conviction or plea of guilty to a felony in violation of section 12.1-16-04;
2. A copy of the record of a judgment of contempt of court for violating an injunction issued under section 12.1-16-05; or
3. A copy of the record of a judgment assessing damages under section 1 of this Act.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 123

SENATE BILL NO. 2223

(Senators W. Stenehjem, C. Nelson)
(Representatives Cleary, DeKrey, Delmore)

CHILD ASSAULT

AN ACT to amend and reenact sections 12.1-17-01.1, 12.1-17-02, subdivision a of subsection 1 of section 12.1-32-15, and subsection 1 of section 14-09-22 of the North Dakota Century Code, relating to the crimes of assault, aggravated assault, and abuse or neglect of a child; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01.1. Assault. A person is guilty of a class A misdemeanor, except if the victim is under the age of twelve years in which case the offense is a class C felony, if that person:

1. Willfully causes substantial bodily injury to another human being; or
2. Negligently causes substantial 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.

SECTION 2. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-02. Aggravated assault. A person is guilty of a class C felony, except if the victim is under the age of twelve years or the victim suffers permanent loss or impairment of the function of a bodily member or organ in which case the offense is a class B felony, if that person:

1. Willfully causes serious bodily injury to another human being;
2. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
3. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
4. Fires a firearm or hurls a destructive device at another human being.

¹⁰⁴ **SECTION 3. AMENDMENT.** Subdivision a of subsection 1 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

- a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, ~~or~~ 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

SECTION 4. AMENDMENT. Subsection 1 of section 14-09-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, a parent, guardian, or other custodian of any child who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
 - a. Inflicts, or allows to be inflicted, upon the child, ~~physical~~ bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
 - b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
 - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
 - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.

Approved March 22, 1999
Filed March 22, 1999

¹⁰⁴ Section 12.1-32-15 was also amended by section 33 of House Bill No. 1045, chapter 50, and section 1 of Senate Bill No. 2299, chapter 131.

CHAPTER 124

SENATE BILL NO. 2305

(Senators Krauter, T. Mathern)
(Representatives Froelich, Kerzman)

HARASSMENT AS CRIME

AN ACT to create and enact a new subsection to section 12.1-17-07 and a new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota Century Code, relating to the crime of harassment and to the powers of a trial court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-17-07 of the North Dakota Century Code is created and enacted as follows:

Any offense defined herein is deemed communicated in writing if it is transmitted electronically, by electronic mail, facsimile, or other similar means.

¹⁰⁵ **SECTION 2.** A new subdivision to subsection 4 of section 12.1-32-07 of the North Dakota Century Code is created and enacted as follows:

Refrain from any subscription to, access, or use of the internet.

Approved March 17, 1999
Filed March 17, 1999

¹⁰⁵ Section 12.1-32-07 was also amended by section 6 of House Bill No. 1016, chapter 16.

CHAPTER 125

SENATE BILL NO. 2186

(Senators Watne, Lyson, W. Stenehjem)

BODILY FLUIDS CONTACT AND INFORMATION

AN ACT to create and enact a new section to chapter 12.1-17 and a new section to chapter 23-07 of the North Dakota Century Code, relating to contact by bodily fluids or excrement and the reporting of test results for certain diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-17 of the North Dakota Century Code is created and enacted as follows:

Contact by bodily fluids or excrement.

1. An individual is guilty of an offense if the individual causes blood, emesis, excrement, mucus, saliva, semen, vaginal fluid, or urine to come in contact with:
 - a. A law enforcement officer acting in the scope of employment;
 - b. An employee of a correctional facility or the department of corrections and rehabilitation acting in the scope of employment unless the employee does an act within the scope of employment which requires or causes the contact;
 - c. Any person lawfully present in a correctional facility who is not an inmate;
 - d. Any person lawfully present in the penitentiary or an affiliated facility of the penitentiary who is not an inmate; or
 - e. Any person who is transporting an individual who is lawfully detained.
2. Subsection 1 does not apply to a mentally ill person as defined in section 25-03.1-02 who has been detained pursuant to chapter 25-03.1.
3. The offense is a class C felony if the individual knowingly causes the contact and is a class A misdemeanor if the individual recklessly causes the contact.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

Report of testing result of imprisoned individuals. Notwithstanding any other provision of law, the state department of health or any other agency shall release the results of any testing for any reportable disease performed on an individual convicted of a crime who is imprisoned if the request is made by any individual and the individual provides written proof from the administrator of the facility with control over the individual imprisoned which states that the individual has had a significant exposure as defined in section 23-07.3-01.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 126

SENATE BILL NO. 2212

(Senators Watne, Schobinger)
(Representatives Klein, Koppelman)

FLEEING A PEACE OFFICER

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to injuring another while fleeing a peace officer; and to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to the penalty for fleeing a peace officer.

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:

Assault or homicide while fleeing peace officer. A person is guilty of a class A felony if that person negligently causes the death of another or a class B felony if that person negligently causes serious bodily injury to another while in violation of section 39-10-71.

SECTION 2. 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 - Penalty. 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 within three years. 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 April 8, 1999
Filed April 8, 1999

CHAPTER 127**HOUSE BILL NO. 1379**

(Representatives Carlisle, Froseth, Kliniske)
(Senators DeMers, Krebsbach, Lee)

EMERGENCY CALL INTERFERENCE

AN ACT to create and enact a new section to chapter 12.1-21 of the North Dakota Century Code, relating to interference with a telephone during emergency calls.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-21 of the North Dakota Century Code is created and enacted as follows:

Interference with telephone during emergency call. A person is guilty of an offense if that person removes, damages, or obstructs any telephone or telephone line or any part or apparatus on the line, or severs any wire connected to the line, so as to interfere with an emergency telephone call. The offense is a class C felony if it was done intentionally. The offense is a class A misdemeanor if it was done knowingly or recklessly.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 128

SENATE BILL NO. 2225

(Senator Klein)
(Representative Cleary)

PERSONAL IDENTIFICATION INFORMATION MISUSE

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to the unauthorized use of personal identifying information; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

Unauthorized use of personal identifying information - Penalty.

1. As used in this section, "personal identifying information" means any of the following information:
 - a. An individual's name;
 - b. An individual's address;
 - c. An individual's telephone number;
 - d. The distinguishing operator's license number assigned to an individual by the department of transportation under section 39-04-14;
 - e. An individual's social security number;
 - f. An individual's employer or place of employment;
 - g. An identification number assigned to the individual by the individuals' employer;
 - h. The maiden name of the individual's mother; or
 - i. The identifying number of a depository account in a financial institution.
2. A person is guilty of a class C felony if the person uses or attempts to use any personal identifying information of an individual to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the individual and by representing that person is the individual or is acting with the authorization or consent of the individual.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 129**SENATE BILL NO. 2255**

(Senators Traynor, Heitkamp)
(Representatives Carlisle, Gulleson)

NONRESIDENT THEFT

AN ACT to create and enact a new section to chapter 12.1-23 of the North Dakota Century Code, relating to theft by nonresidents; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-23 of the North Dakota Century Code is created and enacted as follows:

Jurisdiction - Conduct outside this state. Notwithstanding section 29-03-01.1, a person who, while outside this state and by use of deception, obtains, deprives, or conspires, solicits, or attempts to obtain the property of a person within this state or to deprive such person of property is subject to prosecution under this chapter in the courts of this state. The venue is in the county in which the victim resides or any other county in which any part of the crime occurred.

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

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 130

SENATE BILL NO. 2125

(Senators Thane, Kilzer, Krebsbach)

(Representatives Jensen, Rose)

(At the request of the State Department of Health)

TOBACCO USE BY MINORS

AN ACT to amend and reenact section 12.1-31-03 of the North Dakota Century Code, relating to the purchase, possession, and use of tobacco by minors; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is ~~a class B misdemeanor~~ an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is ~~a class B misdemeanor~~ an infraction for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which is more stringent than this section. Any ordinance or resolution adopted which deems a violation of subsection 1 or 2 a noncriminal violation must provide for a fee of not less than twenty-five dollars.
 - a. Any individual who has been cited for a violation that is designated a noncriminal offense may appear before a court of competent jurisdiction and pay the statutory fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the statutory fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure

appearance before the court must be identical to the statutory fee. This subdivision does not allow a halting officer to receive the statutory fee or bond.

- b. If an individual cited for a violation that is designated a noncriminal offense does not choose to follow any procedure provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation charged. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual charged shall deposit with the court an appearance bond equal to the statutory fee for the violation charged. The state must prove the commission of a charged violation at the hearing under this section by a preponderance of the evidence.
4. A law enforcement officer or juvenile court that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 131

SENATE BILL NO. 2299

(Senators W. Stenehjem, Cook, Tomac)
(Representatives R. Kelsch, Porter)

SEXUAL OFFENDER REGISTRATION

AN ACT to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration of offenders against children and sexual offenders; and to repeal section 27-20-52.1 of the North Dakota Century Code, relating to the law enforcement data base.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁶ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. ~~"Qualified board" means two or more experts in the field of behavior and treatment of sexual offenders as determined by the department of human services.~~
 - f. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter

¹⁰⁶ Section 12.1-32-15 was also amended by section 33 of House Bill No. 1045, chapter 50, and section 3 of Senate Bill No. 2223, chapter 123.

12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Sexually violent predator" means a sexual offender who suffers from a mental abnormality or personality disorder that makes that offender likely to engage in predatory sexually violent offenses
"Temporarily domiciled" means staying or being physically present at a location for longer than ten days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. ~~After a person has pled guilty or been found guilty as a sexual offender, the court shall determine upon the motion of the state's attorney and after receiving a report from the qualified board if that person is a sexually violent predator. The court may order the defendant to undergo an evaluation to enable the qualified board to make an appropriate determination.~~
 3. ~~After a person has pled guilty to or been found guilty of a crime against a child or an attempted crime against a child, or after a person has pled guilty or been found guilty as a sexual offender, the~~ The court shall impose, in addition to any penalty provided by law, a requirement that the ~~person~~ individual register, within ten days of coming into a county in which the ~~person~~ individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the ~~person~~ individual resides, attends school, or is employed in an area other than a city. The court shall require a ~~person~~ an individual to register by stating this requirement on the court records. A ~~person~~ must also register, if that ~~person~~ individual:
 - a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a felony crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.

The official or the department shall require the ~~person~~ individual to read and sign a form as required by the attorney general, stating that the duty of the ~~person~~ individual to register has been explained to that ~~person~~ individual. The official in charge of the place of confinement, or the department, shall obtain the address where the ~~person~~ individual expects to reside, attend school, or work 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~~ three copies of the form to the ~~person~~ individual and shall send ~~four~~ three copies to the attorney general no later than forty-five days before the scheduled release of that ~~person~~ individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the ~~person~~ individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the ~~person~~ individual, and one copy to the court in which the ~~person~~ individual 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~~ individual.

5. 6. A ~~person~~ individual 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~~ the duty to register under this section by the court in which that person individual is convicted. The court shall require the ~~person~~ individual to read and sign a form as required by the attorney general, stating that the duty of the ~~person~~ individual to register under this section has been explained to that ~~person~~ individual. The court shall obtain the address where the ~~person~~ individual expects to reside, attend school, or work 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~~ individual 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~~ individual expects to reside, attend school, or work upon discharge, parole, or release.
6. 7. Registration consists of a written statement signed by the ~~person~~ individual, giving the information required by the attorney general, and the fingerprints and photograph of the ~~person~~ individual. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If a ~~person~~ individual required to register pursuant to this section has a change in name, school, or address, that ~~person~~ individual shall inform in writing, within ten days, the law enforcement agency with whom that ~~person~~ individual last registered of the ~~person's~~ individual's new name, school, or address, or employment address if the individual is working in this state but not residing in this state. 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, school, or employment. Upon a change of address, the ~~person~~ individual required to register shall also register within ten days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. A law enforcement agency that has previously registered an offender may omit the fingerprint portion of the registration if that agency has a set of

fingerprints on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

7. ~~8.~~ ~~A person~~ An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
- a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. ~~Until a court determination is made that the person no longer is a sexually violent predator. The sexually violent predator may petition no more than once a year for a court determination on the status of being a sexually violent predator. The court must receive a report from the qualified board before making the determination~~ For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;
 - (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after the effective date of this Act which is described in subdivision a of subsection 1 of section 12.1-20-03, subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim; or
 - (3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government.
8. ~~9.~~ ~~A person~~ An individual required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve ~~a person~~ an individual, other than a juvenile, who willfully violates this section from serving a term of at least ninety days in jail and completing probation of one year. ~~A person~~ An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
9. ~~10.~~ When ~~a person~~ an individual 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, of the ~~person~~ individual revoked. The statements, photographs, and fingerprints required by this section are open to inspection by the public.
10. ~~11.~~ If ~~a person~~ an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that ~~person~~ individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that ~~person~~

individual is being sent must be notified within a reasonable time period before that ~~person~~ individual is released from the facility or institution. This subsection does not apply to any ~~person~~ individual temporarily released under guard from the facility or institution in which that ~~person~~ individual is confined.

44. 12. Relevant and necessary registration information ~~shall~~ must be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A state officer, law enforcement agency, or school district, its officials, and its employees and an appointee, officer, or employee of those entities are not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 1 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 12-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost.
13. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section. the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
14. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before the effective date of this Act, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.

SECTION 2. REPEAL. Section 27-20-52.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved April 2, 1999
Filed April 2, 1999

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 132

SENATE BILL NO. 2097

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

MONEY BROKER LICENSES, RECORDS, AND FEES

AN ACT to amend and reenact sections 13-04.1-02, 13-04.1-07, and 13-04.1-09.1 of the North Dakota Century Code, relating to money broker license requirements, records, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02. Money broker license required. Except as otherwise herein provided, ~~no~~ a person other than a money broker licensed and authorized under this chapter may not provide loans, consumer leases as a form of financing, advertise, or solicit either in print, by letter, in person, or otherwise in North Dakota, the right to find lenders or provide loans or consumer leases for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson. The term "money broker" also does not include any persons, retail sellers, or manufacturers providing lease financing for their own property or inventory held as a normal course of business, or to leases on any real property.

SECTION 2. AMENDMENT. Section 13-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-07. Manner in which records to be kept. Every money broker licensed under this chapter shall keep a record of all sums collected by them and of all loans and leases completed as a result of their efforts for a period of six years from the date of last entry thereon.

SECTION 3. AMENDMENT. Section 13-04.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-09.1. Advance fees prohibited - Exception. ~~No~~ A money broker may not take any type of fee in advance before the funding of the loan or lease, unless the money broker is licensed under this chapter.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 133

HOUSE BILL NO. 1160

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

MONEY BROKER AND COLLECTION AGENCY LICENSE TRANSFER

AN ACT to amend and reenact sections 13-04.1-05 and 13-05-05 of the North Dakota Century Code, relating to sale and transfer of money broker and collection agency licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted on or before the preceding thirtieth of June and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of banking and financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of five dollars for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 2. AMENDMENT. Section 13-05-05 of the North Dakota Century Code is amended and reenacted as follows:

13-05-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and must be renewed on the succeeding first day of July upon payment of required annual fees. The department of banking and financial institutions may charge an additional fee of five dollars for the renewal of a license after June thirtieth. A collection agency license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a collection agency license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The collection agency license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

Approved March 11, 1999

Filed March 11, 1999

DOMESTIC RELATIONS AND PERSONS

CHAPTER 134

HOUSE BILL NO. 1043

(Legislative Council)
(Judiciary Committee)

DISCRIMINATORY HOUSING PRACTICES

AN ACT to create and enact a new section to chapter 14-02.4 and chapter 14-02.5 of the North Dakota Century Code, relating to discriminatory housing practices; to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to actions for discrimination; to repeal sections 14-02.4-12 and 14-02.4-13, relating to unfair housing; to provide a penalty; to provide an appropriation; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

Discriminatory housing practices.

1. It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:
 - a. Refuse to transfer an interest in real property or housing accommodation to a person because of the person's status with respect to public assistance;
 - b. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of the person's status with respect to public assistance; or
 - c. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of the person's status with respect to public assistance.
2. It is a discriminatory practice for a person, or agent or employee of the person, who lends or provides other financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of real property to discriminate in lending or financial assistance decisions, or in the extension of services in connection with

those decisions, based on the status with respect to public assistance of the person seeking the loan or financial assistance.

3. Any person claiming to be aggrieved by a discriminatory practice in violation of this section may bring an action in district court under the procedure provided in section 14-02.4-19.

SECTION 2. AMENDMENT. Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three years of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to an employer's discriminatory practice may bring a complaint of discriminating employment practices under this chapter to the department of labor within three hundred days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to ~~housing or~~ public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained ~~housing or~~ public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.

SECTION 3. Chapter 14-02.5 of the North Dakota Century Code is created and enacted as follows:

14-02.5-01. Definitions. The definitions in section 14-02.4-02 may be used to supplement the definitions in this chapter. In this chapter, unless the context otherwise requires:

1. "Aggrieved individual" includes any individual who claims to have been injured by a discriminatory housing practice or believes that the individual will be injured by a discriminatory housing practice that is about to occur.
2. "Complainant" means a person, including the department, that files a complaint under section 14-02.5-18.
3. "Conciliation" means the informal negotiations among an aggrieved individual, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.
4. "Conciliation agreement" means a written agreement resolving the issues in conciliation.
5. "Department" means the department of labor.
6. "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of this impairment, or being regarded as having this impairment. The term does not include current illegal use or addiction to any drug or illegal or federally

controlled substance and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite.

7. "Discriminatory housing practice" means an act prohibited by sections 14-02.5-02 through 14-02.5-08 or conduct that is an offense under section 14-02.5-45.
8. "Dwelling" means any structure or part of a structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families or vacant land that is offered for sale or lease for the construction or location of a structure or part of a structure as previously described.
9. "Familial status" means one or more minors being domiciled with a parent or another person having legal custody of the minor or minors; or the designee of the parent or other person having such custody with the written permission of the parent or other person. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any minor.
10. "Family" includes a single individual.
11. "Respondent" means a person accused of a violation of this chapter in a complaint of discriminatory housing practice or a person identified as an additional or substitute respondent under section 14-02.5-21 or an agent of an additional or substitute respondent.
12. "To rent" includes to lease, sublease, or let, or to grant in any other manner, for a consideration, the right to occupy premises not owned by the occupant.

14-02.5-02. Sale or rental.

1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.
3. This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

14-02.5-03. Publication. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination

because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-04. Inspection. A person may not represent to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

14-02.5-05. Entry into neighborhood. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-06. Disability.

1. A person may not discriminate in the sale or rental of, or make unavailable or deny, a dwelling to any buyer or renter because of a disability of the buyer or renter; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with the buyer or renter.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of that individual; of an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or of any individual associated with that individual.
3. In this section, discrimination includes:
 - a. A refusal to permit, at the expense of the individual having a disability, a reasonable modification of existing premises occupied or to be occupied by the individual if the modification may be necessary to afford the individual full enjoyment of the premises, except that, in the case of a rental, the landlord may condition, when it is reasonable to do so, permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - b. A refusal to make a reasonable accommodation in rules, policies, practices, or services if the accommodation may be necessary to afford the individual equal opportunity to use and enjoy a dwelling;
or
 - c. The failure to design and construct a covered multifamily dwelling in a manner that allows the public use and common use portions of the dwellings to be readily accessible to and usable by individuals having a disability; that allows all doors designed to allow passage into and within all premises within the dwellings to be sufficiently wide to allow passage by an individual who has a disability and who is in a wheelchair; and that provides all premises within the dwellings contain the following features of adaptive design:
 - (1) An accessible route into and throughout the dwelling;

- (2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (3) Reinforcements in bathroom walls to allow later installation of grab bars; and
 - (4) Kitchens and bathrooms that are usable and have sufficient space in which an individual in a wheelchair can maneuver.
4. Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for individuals having physical disabilities, commonly cited as "ANSI A 117.1 (1986)", satisfies the requirements of adaptive design in subdivision c of subsection 3.
 5. The adaptive design requirements of subdivision c of subsection 3 do not apply to a building the first occupancy of which occurred on or before March 13, 1991.
 6. This section does not require a dwelling to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals whose tenancy would result in substantial physical damage to the property of others.
 7. Covered multifamily dwellings are buildings consisting of four or more units if the buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

14-02.5-07. Residential real estate-related transaction. A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. For the purposes of this section, a person is in the business of selling residential real property if within the preceding twelve months, the person has participated as principal in three or more transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling.

14-02.5-08. Brokerage services. A person may not deny an individual access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against an individual in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-09. Sales and rentals exempted.

1. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does

not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of an employee or agent of a licensed broker, agent, or realtor, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03.

2. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.
3. The exemption in subsection 1 applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental.

14-02.5-10. Religious organization, private club, and appraisal exemption.

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
2. This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or from giving preference to its members, unless membership in the club is restricted because of race, color, or national origin.
3. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

14-02.5-11. Housing for elderly exempted.

1. The provisions of this chapter relating to familial status and age do not apply to housing that the department determines is specifically designed and operated to assist elderly individuals under a federal or state program; intended for, and solely occupied by, individuals sixty-two years of age or older; or intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit as determined by department rules. In determining whether housing qualifies as housing for elderly under this section, the department shall adopt rules that require at least the following factors:

- a. The existence of significant facilities and services specifically designed to meet the physical or social needs of older individuals or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older individuals;
 - b. That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and
 - c. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
2. Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:
- a. Individuals residing in the housing as of the effective date of this Act who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
 - b. Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

14-02.5-12. Effect on other law.

1. This chapter does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards.
2. This chapter does not affect a requirement of nondiscrimination in any other state or federal law.

14-02.5-13. Duties and powers of department. The department shall administer this chapter. The department may adopt rules necessary to implement this chapter, but substantive rules adopted by the department must impose obligations, rights, and remedies that are the same as are provided in federal fair housing regulations. Within the limits of legislative appropriations the department shall foster prevention of discrimination under this chapter through education for the public, landlords, publishers, realtors, brokers, lenders, and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints.

14-02.5-14. Complaints. As provided by sections 14-02.5-18 through 14-02.5-35, the department shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter.

14-02.5-15. Reports and studies. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.5-16. Cooperation with other entities. The department shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.5-17. Gifts and grants - Fair housing fund - Continuing appropriation.

The department may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the department on a continuing basis for the purposes of administering this chapter.

14-02.5-18. Complaint.

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved individual may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing, under oath, and in the form prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.
2. On the filing of a complaint, the department shall give the aggrieved individual notice that the complaint has been received, advise the aggrieved individual of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section 14-02.5-22, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

14-02.5-19. Answer.

1. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2 of section 14-02.5-18, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the department.
2. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.5-20. Investigation.

1. If the federal government has referred a complaint to the department or has deferred jurisdiction over the subject matter of the complaint to the department, the department shall investigate the allegations set forth in the complaint.
2. The department shall investigate all complaints and, except as provided by subsection 3, shall complete an investigation not later than the hundredth day after the date the complaint is filed or, if it is impracticable to complete the investigation within the hundred-day period, shall dispose of all administrative proceedings related to the investigation not later than the first anniversary after the date the complaint is filed.
3. If the department is unable to complete an investigation within the time periods prescribed by subsection 2, the department shall notify the complainant and the respondent in writing of the reasons for the delay.

14-02.5-21. Additional or substitute respondent. The department may join a person not named in the complaint as an additional or substitute respondent if during the investigation the department determines that the person is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under subsection 2 of section 14-02.5-18, the department shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

14-02.5-22. Conciliation.

1. The department shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the department, to the extent feasible, engage in conciliation with respect to the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.
2. A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of concerned persons. After completion of the department's investigation, the department shall make available to the aggrieved individual and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.

14-02.5-23. Temporary or preliminary relief. The department may authorize a claim for relief for temporary or preliminary relief pending the final disposition of a complaint, if the department concludes after the filing of the complaint that prompt judicial action is necessary to carry out the purposes of this chapter. On receipt of the department's authorization, the attorney general shall promptly file the claim. A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable statutes and the North Dakota Rules of Civil Procedure. The filing of a claim for relief under this section does not affect the initiation or continuation of administrative proceedings under section 14-02.5-31.

14-02.5-24. Investigative report. The department shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved individual and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

14-02.5-25. Reasonable cause determination.

1. The department shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The department shall make this determination not later than the hundredth day after the date a complaint is filed unless making

the determination is impracticable, or the department approves a conciliation agreement relating to the complaint.

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved individual.

14-02.5-26. Charge.

1. A charge issued under section 14-02.5-25 must consist of a short and plain statement of the facts on which the department finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, must be based on the final investigative report, and is not limited to the facts or grounds alleged in the complaint.
2. Upon issuing a charge, the department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved individual on whose behalf the complaint was filed.
3. The department shall include with a charge sent to a respondent a notice of the opportunity for a hearing under section 14-02.5-31.

14-02.5-27. Land use law. If the department determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the department may not issue a charge and shall immediately refer the matter to the attorney general for appropriate action.

14-02.5-28. Dismissal. If the department determines that no reasonable cause exists to believe that a discriminatory housing practice that is the subject of a complaint has occurred or is about to occur, the department shall promptly dismiss the complaint. The department shall make public disclosure of each dismissal.

14-02.5-29. Pending civil trial. The department may not issue a charge alleging a discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

14-02.5-30. Election of judicial determination. A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the charge decided in a civil action as provided by section 14-02.5-36. The election must be made not later than the twentieth day after the date the person having the election receives service under subsection 2 of section 14-02.5-26 or, in the case of the department, not later than the twentieth day after the date the charge is issued. The person making the election shall give notice to the department and to all other complainants and respondents to whom the charge relates.

14-02.5-31. Administrative hearing. If a timely election is not made under section 14-02.5-30, the department shall provide for a hearing on the charge. Except as provided in this section, chapter 28-32 governs a hearing and an appeal of a hearing. A hearing under this section on an alleged discriminatory housing practice

may not continue after the beginning of the trial of a claim for relief commenced by the aggrieved person under federal or state law seeking relief with respect to the discriminatory housing practice.

14-02.5-32. Administrative penalties.

1. If the department determines at a hearing under section 14-02.5-31 that a respondent has engaged in or is about to engage in a discriminatory housing practice, the department may order the appropriate relief, including actual damages, reasonable attorneys' fees, court costs, and other injunctive or equitable relief.
2. To vindicate the public's interest, the department may assess a civil penalty against the respondent in an amount that does not exceed:
 - a. Eleven thousand dollars if the respondent has been found by order of the department or a court to have committed a prior discriminatory housing practice; or
 - b. Except as provided by subsection 3, twenty-seven thousand dollars if the respondent has been found by order of the department or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charges and fifty-five thousand dollars if the respondent has been found by the department or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of filing of the charge.
3. If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has previously been found to have committed acts constituting a discriminatory housing practice, the civil penalties in subdivision b of subsection 2 may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
4. At the request of the department, the attorney general shall sue to recover a civil penalty due under this section. Funds collected under this section must be paid to the state treasurer for deposit in the general fund.

14-02.5-33. Effect of departmental order. A departmental order under section 14-02.5-32 does not affect a contract, sale, encumbrance, or lease that is consummated before the department issues the order and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this chapter.

14-02.5-34. Licensed or regulated business. If the department issues an order with respect to a discriminatory housing practice that occurs in the course of a business subject to a licensing or regulation by a governmental agency, the department, not later than the thirtieth day after the date the order is issued, shall send copies of the findings and the order to the governmental agency and recommend to the governmental agency appropriate disciplinary action.

14-02.5-35. Order in preceding five years. If the department issues an order against a respondent against whom another order was issued within the preceding

five years under section 14-02.5-33, the department shall send a copy of each order to the attorney general.

14-02.5-36. Attorney general action for enforcement. If a timely election is made under section 14-02.5-30, the department shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief on behalf of the aggrieved person in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved individual may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved individual who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved individual has not complied with discovery orders entered by the court.

14-02.5-37. Pattern or practice case - Penalties.

1. On the request of the department, the attorney general may file a claim for relief in district court for appropriate relief if the department has reasonable cause to believe that a person is engaged in a pattern or practice of resistance to the full enjoyment of a right granted under this chapter or a person has been denied a right granted by this chapter and that denial raises an issue of general public importance.
2. In an action under this section, the court may award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as necessary to assure the full enjoyment of the rights granted by this chapter; award other appropriate relief, including monetary damages, reasonable attorneys' fees, and court costs; and to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed fifty thousand dollars for a first violation and one hundred thousand dollars for a second or subsequent violation.
3. A person may intervene in an action under this section if the person is a person aggrieved by the discriminatory housing practice or a party to a conciliation agreement concerning the discriminatory housing practice.

14-02.5-38. Subpoena enforcement. The attorney general, on behalf of the department or another party at whose request a subpoena is issued under this chapter, may enforce the subpoena in appropriate proceedings in district court.

14-02.5-39. Civil action.

1. An aggrieved person may file a civil action in district court not later than the second year after the date of the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.
2. The two-year period does not include any time during which an administrative hearing under this chapter is pending with respect to a complaint or charge under this chapter based on the discriminatory

housing practice. This subsection does not apply to actions arising from the breach of a conciliation agreement.

3. An aggrieved individual may file a claim for relief whether a complaint has been filed under section 14-02.5-18 and without regard to the status of any complaint filed under that section.
4. If the department has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file a claim for relief with respect to the alleged discriminatory housing practice that forms the basis of the complaint except to enforce the terms of the agreement.
5. An aggrieved individual may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the department if the department has begun a hearing on the record under this chapter with respect to the charge.

14-02.5-40. Court-appointed attorney. On application by a person alleging a discriminatory housing practice or by a person against whom a discriminatory housing practice is alleged, the court may appoint an attorney for the person.

14-02.5-41. Relief granted. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, reasonable attorneys' fees, court costs, and subject to section 14-02.5-42, a permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

14-02.5-42. Effect of relief granted. Relief granted under sections 14-02.5-39 through 14-02.5-44 does not affect a contract, sale, encumbrance, or lease that is consummated before the granting of the relief and involves a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint or civil action under this chapter.

14-02.5-43. Intervention by attorney general. On request of the department, the attorney general may intervene in an action under sections 14-02.5-39 through 14-02.5-44 if the department certifies that the case is of general public importance. The attorney general may obtain the same relief as is available to the attorney general under subsection 2 of section 14-02.5-37.

14-02.5-44. Prevailing party. A court in an action brought under this chapter or the department in an administrative hearing under section 14-02.5-31 may award reasonable attorneys' fees to the prevailing party and assess court costs against the nonprevailing party.

14-02.5-45. Intimidation or interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the

sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

- b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage, in an activity, service, organization, or facility described in subdivision a.

2. An offense under this section is a class A misdemeanor.

SECTION 4. REPEAL. Sections 14-02.4-12 and 14-02.4-13 of the North Dakota Century Code are repealed.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$39,000, or so much of the sum as may be necessary, and federal funds of \$159,000 to the labor commissioner for the purpose of providing services to prevent discrimination in North Dakota, including employment discrimination and unfair housing practices, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on October 1, 1999.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 135

SENATE BILL NO. 2254

(Senators Wanzek, Christmann, D. Mathern, Watne)
(Representatives Kliniske, Sandvig)

PARTIAL-BIRTH ABORTIONS

AN ACT relating to the performance of partial-birth abortions; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Partially born" means the living intact fetus's body, with the entire head attached, is delivered so that any of the following has occurred:
 - a. The living intact fetus's entire head, in the case of a cephalic presentation, or any portion of the living intact fetus's torso above the navel, in the case of a breech presentation, is delivered past the mother's vaginal opening; or
 - b. The living intact fetus's entire head, in the case of a cephalic presentation, or any portion of the living intact fetus's torso above the navel, in the case of a breech presentation, is delivered outside the mother's abdominal wall.
2. "Sharp curettage or suction curettage abortion" means an abortion in which the developing child and products of conception are evacuated from the uterus with a sharp curettage or through a suction cannula with an attached vacuum apparatus.

SECTION 2. Prohibition - Penalty - Exception.

1. Any person who intentionally causes the death of a living intact fetus while that living intact fetus is partially born is guilty of a class AA felony. A mother whose living intact fetus dies while partially born may not be prosecuted for a violation of this Act or for conspiracy to violate this Act.
2. This Act does not apply to a sharp curettage or suction curettage abortion or to any offense committed under chapter 12.1-17.1 or chapter 14-02.1.

SECTION 3. Exception for life of mother. Section 2 does not prohibit a physician from taking measures that in the physician's medical judgment are necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury, if:

1. Every reasonable precaution is also taken, in this case, to save the child's life; and

2. The physician first certifies in writing, setting forth in detail the facts upon which the physician relies in making this judgment. This certification is not required in the case of an emergency and the procedure is necessary to preserve the life of the mother.

Approved April 19, 1999

Filed April 19, 1999

CHAPTER 136

HOUSE BILL NO. 1473

(Representatives Jensen, Delmore)
(Senators C. Nelson, W. Stenehjem)

DOMESTIC VIOLENCE AND SEXUAL ASSAULT PREVENTION FUND

AN ACT to amend and reenact sections 14-07.1-01, 14-07.1-15, and 14-07.1-16 of the North Dakota Century Code, relating to the domestic violence and sexual assault prevention fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-01. Definitions.

1. "Department" means the state department of health.
2. "Domestic violence" includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.
3. "Domestic violence sexual assault 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 and sexual assault.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Willfully" means willfully as defined in section 12.1-02-02.

SECTION 2. AMENDMENT. Section 14-07.1-15 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-15. Domestic violence and sexual assault prevention fund established.

The domestic violence and sexual assault prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

SECTION 3. 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 and sexual assault prevention fund for grants to domestic violence sexual assault organizations as defined in section 14-07.1-01. ~~An~~ Up to ten percent of the fund may be allocated to the state domestic violence sexual assault coalition, as recognized by the state department of health. A direct service provider agency that is 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.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 137**SENATE BILL NO. 2197**
(Senators Cook, Christmann, Traynor)
(Representative Kliniske)**DOMESTIC ABUSE FALSE ALLEGATIONS**

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to false allegations of domestic abuse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Allegation of domestic violence - Effect. If the court finds that a party's allegation of domestic violence in a domestic violence protection order proceeding, divorce proceeding, child custody proceeding, child visitation proceeding, separation proceeding, or termination of parental rights proceeding is false and not made in good faith, the court shall order the party making the false allegation to pay court costs and reasonable attorney's fees incurred by the other party in responding to the allegation.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 138

HOUSE BILL NO. 1077

(Judiciary Committee)
(At the request of the Supreme Court)

FOREIGN DOMESTIC VIOLENCE PROTECTION ORDERS

AN ACT to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to recognition and enforcement of foreign domestic violence protection orders; to amend and reenact section 14-07.1-06 of the North Dakota Century Code, relating to violations of protection orders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

Foreign domestic violence protection orders - Full faith and credit recognition and enforcement. Subject to subsection 1, a domestic violence protection order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States must be accorded full faith and credit by the courts of this state and enforced as if the order was issued by a court in this state.

1. A foreign domestic violence protection order is enforceable in this state if all of the following are satisfied:
 - a. The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
 - b. The order is in effect in the issuing jurisdiction;
 - c. The issuing court had jurisdiction over the parties and the subject matter;
 - d. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protection order or any process filed seeking enforcement of the order; and
 - e. If the order also provides protection for the respondent, a petition, application, or other written pleading was filed with the issuing court seeking such an order and the issuing court made specific findings that the respondent was entitled to the order.

2. A person entitled to protection under a foreign domestic violence protection order may file the foreign order in the office of any clerk of district court in this state. The person filing the order shall also file with the clerk of district court an affidavit certifying the validity and status of the foreign order and attesting to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03. Filing of a foreign order under this subsection is not a prerequisite to the order's enforcement in this state. A fee for filing the foreign order may not be assessed.
3. A law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer by any source. The officer may make arrests for violation of the order in the same manner as for violation of a protection order issued in this state. A law enforcement officer may rely on the statement of the person protected by the order that the order is in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protection order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protection order.
4. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted pursuant to under 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 contempt of court. A second or subsequent violation of a protection order is a class C felony subject to the penalties therefor. Violation of a foreign protection order entitled to full faith and credit recognition under section 1 of this Act is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 139**SENATE BILL NO. 2306**

(Senators Krebsbach, Lyson)
(Representatives Price, Sveen)

DOMESTIC VIOLENCE ARRESTS

AN ACT to amend and reenact section 14-07.1-11 of the North Dakota Century Code, relating to arrest without warrant in domestic violence assaults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07.1-11 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-11. Arrest without warrant.

1. A law enforcement officer shall arrest a person without a warrant if the person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer.
2. A law enforcement officer may arrest a person without a warrant if the arrest is made within ~~four~~ twelve hours 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, whether or not the assault took place in the presence of the officer. After ~~four~~ twelve 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 subsection without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.
3. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 140**SENATE BILL NO. 2288**

(Senator W. Stenehjem)

(Representatives Hoffner, R. Kelsch, Mahoney, Wentz)

CHILD SUPPORT ARREARS AS JUDGMENTS

AN ACT to amend and reenact subsection 1 of section 14-08.1-05 of the North Dakota Century Code, relating to treatment of child support arrears as judgments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 14-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of the clerk of district court maintained under section 14-09-08.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitations provided in chapter 28-01, nor may such judgment be canceled pursuant to section 28-20-35;
 - 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.

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

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 141

SENATE BILL NO. 2170

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT LAW REVISIONS

AN ACT to create and enact a new section to chapter 14-08.1, a new section to chapter 14-19, and a new section to chapter 20.1-03 of the North Dakota Century Code, relating to certification of child support records, the duties of voluntary paternity establishment service entities, and the recording of social security numbers on game and fish license and permit applications; to amend and reenact subsection 1 of section 14-09-08.4, sections 14-09-08.6, 14-09-08.10, 14-09-08.11, 14-09-09.6, 14-09-09.15, 14-09-09.16, 14-09-09.28, 14-09-25, subsection 3 of section 14-17-11, subsection 4 of section 14-17-14, sections 14-17-17, 14-19-01, 14-19-05, 14-19-07, 14-19-08, 39-06-07, section 50-09-02.4, subdivision h of subsection 1 of section 50-09-08.2, sections 50-09-08.3, and 50-09-08.5 of the North Dakota Century Code, relating to technical and conforming amendments to child support laws and the state disbursement unit; to repeal sections 14-09-14 and 14-09-27 of the North Dakota Century Code, relating to exceptions to parental liability for child support and to the state disbursement fund; to provide a continuing appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-08.1 of the North Dakota Century Code is created and enacted as follows:

Certification of records. The clerk of court and any authorized agent of the public authority or a child support agency, in any circumstance or proceeding requiring proof of the contents of the official records of the state regarding any information maintained in the state case registry of the automated data processing system established under section 50-09-02.1, may certify the content of those records. A certification provided under this section is prima facie evidence of the contents of those records.

SECTION 2. AMENDMENT. Subsection 1 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

1. Each child support order must be reviewed by the child support agency no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the court or child support agency unless:
 - a. In the case of an order with respect to which there is in effect an assignment under chapter 50-09 ~~or 50-24.1~~, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.

SECTION 3. AMENDMENT. Section 14-09-08.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.6. Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by:
 - a. ~~Providing~~ providing an income report, in the form and manner required by the ~~child support agency~~ public authority, accurately completed and attested to by the obligor; earnings statements secured from the obligor's current income payor if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:
 - b. ~~a.~~ A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
 - e. ~~b.~~ A written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. ~~If information concerning the obligor's income sufficient to accomplish the review has not been timely furnished by the obligor, the child support agency may apply to the court for an order compelling the obligor to furnish information sufficient to accomplish the review.~~
3. ~~If an application to the court made pursuant to subsection 2 has not resulted in the production of the obligor has not produced~~ information under subsection 1 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 4. AMENDMENT. Section 14-09-08.10 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.10. Order. Each order entered under this code for the support of a minor child or the support of a child after majority under section 14-09-08.2 must include a provision for health insurance coverage for that child.

1. Except as provided in subsection 2, the order must require the obligor to provide satisfactory health insurance coverage whenever that coverage is available at reasonable cost or becomes available at reasonable cost.
2. If the obligee is an individual with physical custody of the child, the obligee must be required to provide satisfactory health insurance whenever that coverage is available at no or nominal cost.

SECTION 5. AMENDMENT. Section 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Employer to permit enrollment.

1. When an obligor is required to cover a minor child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. If health insurance coverage required under section 14-09-08.10 is available through an income ~~payer~~ payor, the income ~~payer~~ payor must:
 - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
 - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
 - c. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application ~~to~~ by the public authority, subject to subsection 2, whenever the child receives:
 - (1) Benefits through a ~~demonstration project established under section 50-06-01.8,~~ temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or
 - (2) Services provided upon application of an obligee to the child support agency;
 - d. Not disenroll or eliminate coverage for any child unless the income ~~payer~~ payor is provided satisfactory written evidence that:
 - (1) The order issued under section 14-09-08.10 is no longer in effect;
 - (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; or
 - (3) The income ~~payer~~ payor has eliminated family health coverage for all of its employees;
 - e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the health insurance provider; and
 - f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income.

2. Before making application under subdivision c of subsection 1, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the health insurance provider. If the amount remaining is insufficient to pay the obligor's share of premiums for health insurance coverage, the obligor may authorize additional withholding to pay the obligor's share. If the obligor does not authorize additional withholding, and the health insurance coverage will lapse as a result, the income ~~payer~~ payor must promptly inform the clerk of court or public authority that issued the order under section 14-09-09.15 of the insufficiency.

SECTION 6. AMENDMENT. Section 14-09-09.6 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.6. Voluntary income withholding for support - Limitations. An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payor one week after service upon the income payor by ~~personal service or by certified~~ first-class mail, or in any other manner agreed to by the income payor, of a true copy of the executed income withholding authorization. The income payor shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payor may deduct a fee of three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payor with an income withholding authorization issued under this section discharges the income payor's liability to the obligor for that portion of the obligor's income. The income payor may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 7. AMENDMENT. Section 14-09-09.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.15. Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota; ~~be attested in the name of the judge, subscribed by the clerk or a designee of the public authority~~ in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payor to comply with the income withholding order, and be directed to all current and subsequent income payors of the obligor. The income withholding order is binding on the income payor until further notice by the clerk or the public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payor. The income withholding order has priority over any other legal process against the same income.

¹⁰⁷ **SECTION 8. 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.

1. The clerk of court or the public authority shall serve the income withholding order on the income payor ~~in the manner provided for service of a summons in a civil action by first-class mail or in any other manner agreed to by the income payor,~~ and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under section 14-09-09.24, an income withholding order must be served on any known income payor within ~~five~~ two business days of the ~~issuance of the judgment or order which requires the payment of child support date of receipt of information necessary to carry out income withholding.~~ 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 must be served on any subsequently identified income payor within ~~five~~ two business days ~~after the issuer is informed of the name and address of such an income payor of the date of receipt of information necessary to carry out income withholding.~~
3. An income withholding order may also be issued and served at the request of the obligor. ~~The income withholding order, upon certification by the public authority to the secretary of state and the legislative council that the secretary of the United States department of health and human services, under authority of 42 U.S.C. 666(b)(6)(A)(ii), has prescribed a standard format for notice of the order, must be in that standard format and contain only the information necessary for the income payor to comply with the withholding order. Before that certification, the income withholding order must state all of the following:~~
 4. ~~4.~~ 4. ~~That the obligor is properly subject to an income withholding order and that the~~ The income payor ~~is therefore required to~~ shall withhold a stated amount, determined under section 14-09-09.30, from the obligor's income at the time the obligor is paid for transmittal to the ~~clerk of court or the public authority~~ within seven business 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. ~~5.~~ 5. ~~That the~~ 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. ~~6.~~ 6. ~~That the~~ 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

¹⁰⁷ Section 14-09-09.16 was also amended by section 2 of House Bill No. 1121, chapter 142.

accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payor.

4. ~~7.~~ 7. ~~That the~~ The income payor shall begin withholding no later than the first payday that occurs after service of the income withholding order.
5. ~~8.~~ 8. ~~That if~~ 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 or~~ the public authority that portion thereof which the obligee's claim bears to the combined total of all claims.
6. ~~9.~~ 9. ~~That the~~ The income payor shall notify the ~~clerk of court or~~ the public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payor, if known.
7. ~~10.~~ 10. ~~That if~~ If the income payor is subject to income withholding orders for more than one obligor:
 - a. ~~Prior to the system implementation date,~~ 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; and
 - b. ~~Thereafter,~~ the income payor may combine in a single payment the amounts for all obligors who have been ordered to pay the public authority with identification of the amount attributed 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.

SECTION 9. AMENDMENT. Section 14-09-09.28 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.28. Application to existing cases. Sections 14-09-09.26, 14-09-09.27, ~~14-12.1-12~~, subsection 3 of section ~~14-12.1-18~~, and section ~~14-12.1-38~~ 14-12.2-19, and 14-12.2-20 apply to actions filed prior to July 7, 1991.

¹⁰⁸ SECTION 10. AMENDMENT. Section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

14-09-25. (~~Effective July 1, 1999~~) State disbursement unit - Duties - Continuing appropriation.

1. The public authority shall establish a state disbursement unit for the collection and disbursement of payments of child support. The state disbursement unit is responsible for the collection and disbursement of all payments under child support orders.
2. The public authority may contract with any public or private entity for any service provided by the state disbursement unit. The state disbursement unit may employ technology and agents to allow receipt of child support payments at locations and times when state disbursement unit staff are not available.
3. The state disbursement unit shall use automated procedures, electronic processes, and computer-driven technology, including the statewide automated data processing system established under section 50-09-02.1, to the maximum extent feasible, efficient, and economical, for the collection and distribution of child support payments.
4. The state disbursement unit shall account for and disburse all support payments received by it, maintain necessary records, and develop procedures for providing information to the parties, including the obligor and obligee, regarding actions taken and, at least annually, regarding child support payments collected and distributed. The state disbursement unit shall adopt procedures for the maintenance and retention of records of child support payments, and for the storage and destruction of records when the support obligation is satisfied or is terminated.
5. The state disbursement unit shall ~~establish a fund, known as the state disbursement unit fund. All deposit all~~ child support payments received; ~~except those payments assigned to the state, shall be deposited into the state disbursement unit fund, and all disbursements of child support, except those payments assigned to the state, must be made from the state disbursement unit fund in the state treasury. All payments so deposited, except those payments assigned to the state, are appropriated to the public authority as a standing and continuing appropriation for the purpose of making disbursements to obligees entitled to the child support payments collected.~~
6. The state disbursement unit shall disburse collected child support payments 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.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error.

¹⁰⁸ Section 14-09-25 was also amended by section 1 of Senate Bill No. 2287, chapter 284.

7. Unless notice has otherwise been provided, the state disbursement unit shall provide notice to the obligor, the obligee, and any income payor that payment must be made to the state disbursement unit.

SECTION 11. AMENDMENT. Subsection 3 of section 14-17-11 of the North Dakota Century Code is amended and reenacted as follows:

3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. ~~Verified documentation~~ Documentation of the chain of custody of the genetic specimens, provided by an examiner appointed under section 14-17-10, is competent evidence to establish the chain of custody. ~~A verified report obtained from an examiner appointed pursuant to under section 14-17-10 must be admitted at trial unless a written objection to the testing procedures or the results of genetic analysis has been made at least ten days before trial or at an earlier time determined by the court.~~

SECTION 12. AMENDMENT. Subsection 4 of section 14-17-14 of the North Dakota Century Code is amended and reenacted as follows:

4. Support judgments or orders ~~ordinarily~~ for future support must be for ~~periodic~~ monthly payments which ~~may vary in amount~~ must be in amounts consistent with guidelines established under section 14-09-09.7. ~~In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.~~

SECTION 13. AMENDMENT. Section 14-17-17 of the North Dakota Century Code is amended and reenacted as follows:

14-17-17. Modification of judgment or order. The court has continuing jurisdiction to modify a judgment or order for future support and, subject to section 14-09-06.6, custody and rights of visitation for the child.

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

14-19-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Birthing hospital" means a hospital licensed under chapter 23-16 which provides obstetrical services.
2. "Department" means the department of human services.
3. "Donor" means a woman whose body produced an egg for the purposes of assisted conception but does not include a woman whose body produces an egg used for the purpose of conceiving a child for that woman.
4. "Gestational carrier" means a woman who enters into an agreement to have an embryo implanted in her and bear the resulting child for intended parents, where the embryo is conceived by using the egg and sperm of the intended parents.

5. "Married woman" includes a woman who attempted to marry by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid.
6. "Mother" means a woman who gives birth to a child or, if pregnancy resulted from assisted conception, the woman who is the donor but not the woman who is the gestational carrier.
7. "Party" means the man with whom the relationship of father and child is sought or established, the child's mother, and, for purposes of proceedings to relieve a party of the relationship of father and child, the child.
8. "Relationship of father and child" means the legal relationship existing between a father and the father's natural or adoptive child incident to which the law confers or imposes rights, privileges, duties, and obligations.
9. "Voluntary paternity establishment service entity" means the state department of health and any child support agency, as that term is defined in section 14-09-09.10.

SECTION 15. AMENDMENT. Section 14-19-05 of the North Dakota Century Code is amended and reenacted as follows:

14-19-05. Filing of acknowledgment - ~~Services provided.~~ An acknowledgment of paternity made under this chapter must be filed with the state department of health. Upon request of the department, the state department of health shall furnish a certified copy of an acknowledgment of paternity to the department. ~~The state department of health shall offer voluntary paternity establishment services.~~

SECTION 16. A new section to chapter 14-19 of the North Dakota Century Code is created and enacted as follows:

Voluntary paternity establishment service entities - Duties.

1. At any time after an unmarried woman is determined to be pregnant, a voluntary paternity establishment entity may:
 - a. Provide to the mother and the alleged father, if the alleged father is present:
 - (1) Written materials about paternity establishment;
 - (2) The forms necessary to voluntarily acknowledge paternity;
 - (3) A written and oral description of the rights, responsibilities, and legal consequences of establishing paternity; and
 - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment; and
 - b. Provide the mother and the alleged father, if the alleged father is present, the opportunity to voluntarily acknowledge paternity.

2. Before accepting a voluntary acknowledgment of paternity, a voluntary paternity establishment service entity shall afford due process safeguards by informing, in writing, the mother and the alleged father, if the alleged father is present, of the manner in which a relationship of father and child established under this chapter may be vacated or rescinded.
3. A voluntary paternity establishment service entity shall forward completed acknowledgments to the state department of health.

SECTION 17. AMENDMENT. Section 14-19-07 of the North Dakota Century Code is amended and reenacted as follows:

14-19-07. Immunity from liability. A hospital, ~~its~~ a voluntary paternity establishment service entity, and the agents, or its employees of either, acting in accordance with this chapter or attempting in good faith to do so, are immune from civil liability for that activity.

SECTION 18. AMENDMENT. Section 14-19-08 of the North Dakota Century Code is amended and reenacted as follows:

14-19-08. Powers and duties of the department. The department shall:

1. Provide each birthing hospital and voluntary paternity establishment service entity in the state:
 - a. Written materials about paternity establishment.
 - b. Forms necessary to voluntarily acknowledge paternity.
 - c. A written description of the rights and responsibilities of acknowledging paternity.
2. Provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity reasonably necessary to assist a birthing hospital or voluntary paternity establishment service entity in its duties under this chapter.
3. In cooperation with the state department of health, secure information on each voluntary paternity establishment service entity's and each birthing hospital's paternity acknowledgment program at least annually.
4. In cases involving applications for child support services made to a child support agency which require paternity establishment, determine if a voluntary paternity acknowledgment has been filed with the state department of health.
5. Assure that the same procedures governing birthing hospitals apply to voluntary paternity establishment service entities, including use of the same notice provisions, the same materials, the same evaluation methods, and the same training for personnel.

SECTION 19. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Social security number to be furnished. The social security number of an applicant for any license or permit issued under this chapter must be recorded on

the application unless the applicant is a foreign national to whom no social security number has been issued. A social security number recorded under this section is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 20. AMENDMENT. Section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07. Application for license or instruction permit.

1. Every application for an instruction permit or for an operator's license must be made upon a form furnished by the director.
2. Every application must state the full name, date of birth, sex, social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.2. The application must contain such other information as the director may require.
3. Whenever an application is received from a person previously licensed in another jurisdiction, the director may request a copy of the driver's record from such other jurisdiction. When received, the driving record becomes a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.
4. Whenever the director receives a request for a driving record from another licensing jurisdiction, the record must be forwarded without charge.

SECTION 21. AMENDMENT. Section 50-09-02.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-02.4. (Effective July 1, 1999) State case registry.

1. The statewide automated data processing system established under section 50-09-02.1 must include a registry that contains records with respect to:
 - a. Each child support case in which services are being provided by the state agency or a child support agency under title IV-D; and
 - b. Each child support order established or modified in this state on or after October 1, 1998.
2. The case records must use standardized data elements for both parents and contain other information the secretary requires.
3. Each case record concerning a case with respect to which services are being provided by the state agency or a child support agency under title IV-D must:

- a. Include payment records consistent with the requirements of title IV-D, which include:
 - (1) The amount of current monthly or other periodic support owed under the order and other amounts, including arrearages, interest, late payment penalties, fees, and amounts determined under section 14-09-09.30, due or past due under the order;
 - (2) Any amount described in paragraph 1 that has been collected;
 - (3) The distribution of collected amounts;
 - (4) The birthdate and the social security number of any child for whom an order requires the provision of support; and
 - (5) The amount necessary to satisfy any lien imposed under chapter 35-34 or established as a judgment lien under section 14-08.1-05.
- b. Be established, maintained, updated, and monitored on the basis of:
 - (1) Information on administrative actions and administrative and judicial proceedings and orders relating to paternity and child support;
 - (2) Information obtained from comparison with federal, state, and local sources of information;
 - (3) Information on child support collections and distributions; and
 - (4) Any other relevant information.

SECTION 22. AMENDMENT. Subdivision h of subsection 1 of section 50-09-08.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. Enter into agreements with financial institutions doing business in the state, and with the assistance, or through the agency, of the secretary, with financial institutions doing business in two or more states:
 - (1) To develop and operate, in coordination with those financial institutions, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide in each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such financial institution and who owes past due support, as identified by the state agency by name and social security number or other taxpayer number; and

- (2) Under which such financial institution, in response to a notice of lien or an execution, will encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for unpaid child support.

SECTION 23. AMENDMENT. Section 50-09-08.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-08.3. Administrative enforcement in interstate cases. In acting as the official agency of the state in administering the child support program under title IV-D, the state agency, directly or through agents and county agencies:

1. ~~Shall respond within five business days of receipt of a request made by another state to enforce a child support order~~ use high-volume automated administrative enforcement, to the same extent as used in intrastate cases, in response to a request made by another state to enforce a child support order, and shall promptly report the results of such enforcement procedure to the requesting state;
2. ~~May transmit requests~~ by electronic or other means, to other states ~~requests~~ for assistance in cases involving enforcement of child support orders which include information provided and intended to enable the receiving state to compare information about the case to information in the data bases of the receiving state, and which constitute a certification:
 - a. Of the amount of arrearages, if any, under the child support order; and
 - b. That procedural due process requirements applicable to the case have been complied with;
3. In cases in which the state agency receives requests made by another state to enforce a child support order, shall not consider that matter a child support case transferred to this state; and
4. Shall maintain records of:
 - a. The number of requests for assistance made by other states;
 - b. The number of cases in which this state collected support in response to requests made by other states; and
 - c. The amount of support collected.

For purposes of this section, the term "high-volume automated administrative enforcement" means, in interstate cases, on request of another state, the identification, by this state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in another state, and the seizure of such assets, by this state, through levy or other appropriate processes.

SECTION 24. AMENDMENT. Section 50-09-08.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-09-08.5. Securing assets to satisfy past due child support. In acting as the official agency of the state in administering the child support program under title IV-D, in cases in which there is past due child support, the state agency may secure assets to satisfy any current support obligation and the past due amount by issuing writs of execution under chapter 28-21. Those writs of execution may be used to secure or seize property including:

1. Periodic or lump sum payments from:
 - a. An agency administering unemployment compensation benefits, workers' compensation benefits, or other benefits; and
 - b. Judgments, settlements, and gaming proceeds otherwise belonging to the obligor, or payable upon the obligor's demand;
2. Assets of the obligor held in financial institutions; and
3. Public and private retirement funds.

SECTION 25. REPEAL. Section 14-09-14 of the North Dakota Century Code is repealed.

SECTION 26. REPEAL. Section 14-09-27 of the North Dakota Century Code is repealed.

SECTION 27. EFFECTIVE DATE. Sections 10 and 26 of this Act are effective July 1, 1999.

SECTION 28. EMERGENCY. Sections 10 and 26 of this Act are declared to be an emergency measure.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 142

HOUSE BILL NO. 1121

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT NOTICE, PAYMENT, AND INCOME WITHHOLDING

AN ACT to amend and reenact section 14-09-08.1, subsection 9 of section 14-09-09.16, and section 14-09-09.29 of the North Dakota Century Code, relating to notice procedures, procedures upon failure to pay child support, and coordination of income withholding services; to provide for a report to the legislative council; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.1. (Effective through June 30, 1999) Support payments - Payment to court or state disbursement unit - 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, or to the public authority, for remittance to the obligee. 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 in the statewide automated data processing system established under section 50-09-02.1. Before the system implementation date, upon notification that a party to the case is receiving services under title IV-D of the Social Security Act [42 U.S.C. 651 et seq.], or an assignment of support rights is in effect, the clerk of court must credit and transmit payments 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. a. Each party subject to the order shall immediately inform the clerk of court and the public authority of the party's:
 - (1) Social security number;
 - (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and

- (6) Change of any other condition which may affect the proper administration of this chapter.
 - b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, service may be effected by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
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.
4. The court of its own motion or on motion of a child support agency or 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, this section applies 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.
5. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section, and not required to be paid to the state disbursement unit, 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.

(Effective July 1, 1999) Support payments - Payment to state disbursement unit - 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 state disbursement unit for remittance to the obligee.
2. a. Each party subject to the order shall immediately inform the state disbursement unit of the party's:
 - (1) Social security number;

- (2) Residential and mailing addresses and any change of address;
 - (3) Telephone number;
 - (4) Motor vehicle operator's license number;
 - (5) Employer's name, address, and telephone number; and
 - (6) Change of any other condition which may affect the proper administration of this chapter.
- b. The requirements of subdivision a must be incorporated into each order for payment of child support.
 - c. In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, ~~service may be effected~~ the court shall deem due process requirements for notice and service to have been met, with respect to the noticed party, by delivery of written notice to the most recent residential or employer address provided by the noticed party pursuant to this subsection.
 - d. The requirements of this subsection continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
3. Whenever there is failure to make the payments as required, the ~~state disbursement unit~~ clerk of court 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.
 4. The court of its own motion or on motion of a child support agency or 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, this section applies 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.

¹⁰⁹ **SECTION 2. AMENDMENT.** If Senate Bill No. 2170 is approved by the fifty-sixth legislative assembly and becomes effective, subsection 9 of section 14-09-09.16 of the North Dakota Century Code as amended by section 8 of Senate Bill No. 2170 is amended and reenacted as follows:

¹⁰⁹ Section 14-09-09.16 was also amended by section 8 of Senate Bill No. 2170, chapter 141.

9. The income payor shall notify the clerk of court or the public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payor, if known.

SECTION 3. AMENDMENT. Section 14-09-09.29 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.29. (Effective July 1, 1999) Coordination of income withholding activities. The public authority shall assume responsibility for administration of income withholding orders relating to matters being enforced under title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651] and the receipt and disbursement of child support payments. The clerks of court shall otherwise maintain responsibility for administration of income withholding.

SECTION 4. REPORT TO LEGISLATIVE COUNCIL. The department of human services shall report on the progress of the implementation of this Act to a designated legislative council interim committee between August 1, 2000, and August 31, 2000.

SECTION 5. EFFECTIVE DATE. Sections 1 and 3 of this Act become effective on July 1, 1999.

SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective through January 15, 2001, and after that date is ineffective. Section 14-09-09.29 as it existed on the day before the effective date of this Act becomes effective January 16, 2001.

SECTION 7. EMERGENCY. Sections 1 and 3 of this Act are declared to be an emergency measure.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 143

SENATE BILL NO. 2073

(Senator W. Stenehjem)

CHILD SUPPORT AFTER MAJORITY

AN ACT to amend and reenact section 14-09-08.2 of the North Dakota Century Code, relating to child support for children after majority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. 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. A judgment or order may require payment of child support after majority under substantially the circumstances described in subsection 1.
3. The person to whom the duty of support is owed shall under either subsection 1 or 2 may file an affidavit with the district court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support continues pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. 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. If at anytime thereafter 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, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the court shall determine if the requirements of subsection 1 are met child is enrolled in and attending high school and shall enter an order accordingly.
3. 5. This section applies to child support orders concerning children described in subsection 1 or 2, regardless of the date of entry of the order, provided that the affidavit described in subsection 2 3 is filed not

later than ninety days after the child graduates from high school or reaches age nineteen, whichever ~~comes~~ occurs first.

4. 6. 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.
7. For purposes of this section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation.

Approved March 30, 1999

Filed March 30, 1999

CHAPTER 144**SENATE BILL NO. 2039**
(Legislative Council)
(Child Support Committee)**CHILD SUPPORT EXTENDED VISITATION IMPACT**

AN ACT to amend and reenact subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to the impact of extended visitation on child support orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁰ **SECTION 1. AMENDMENT.** Subsection 1 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of human services shall establish child support guidelines to assist courts in determining the amount ~~that~~ a parent should be expected to contribute toward the support of the child under this section. The guidelines must:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances ~~which~~ that should be considered in reducing support contributions on the basis of hardship.
 - e. Include consideration of extended periods of time a minor child spends with the child's obligor parent.

Approved March 18, 1999
Filed March 19, 1999

¹¹⁰ Section 14-09-09.7 was also amended by section 1 of House Bill No. 1028, chapter 145.

CHAPTER 145**HOUSE BILL NO. 1028**

(Legislative Council)
(Child Support Committee)

GROSS INCOME DEFINITION FOR CHILD SUPPORT

AN ACT to amend and reenact subdivision a of subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to the child support guidelines' definition of gross income.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹¹ **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 14-09-09.7 of the North Dakota Century Code is amended and reenacted as follows:

- a. Include consideration of gross income. For purposes of the guidelines, gross income does not include an employee benefit over which the employee does not have significant influence or control over the nature or amount unless:
 - (1) That benefit may be liquidated; and
 - (2) Liquidation of that benefit does not result in the employee incurring an income tax penalty.

Approved March 22, 1999
Filed March 22, 1999

¹¹¹ Section 14-09-09.7 was also amended by section 1 of Senate Bill No. 2039, chapter 144.

CHAPTER 146

SENATE BILL NO. 2040

(Legislative Council)
(Child Support Committee)

CHILD CUSTODY AND VISITATION

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to the rights and duties of parents in child custody and visitation proceedings; and to amend and reenact section 14-09-24 of the North Dakota Century Code, relating to enforcement of child visitation.

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:

Parental custody and visitation rights and duties.

1. Each parent of a child has the following custody and visitation rights and duties:
 - a. Right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information.
 - b. Right to attend educational conferences concerning the child. This right does not require any school to hold a separate conference with each parent.
 - c. Right to reasonable access to the child by written, telephonic, and electronic means.
 - d. Duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment. The parent shall provide to the other parent a description of the serious accident or serious illness, the time of the serious accident or serious illness, and the name and location of the treating health care provider.
 - e. Duty to immediately inform the other parent of a change in residential telephone number and address.
 - f. Duty to keep the other parent informed of the name and address of the school the child attends.
2. The court shall include in an order establishing or modifying visitation the rights and duties listed in this section; however, the court may restrict or exclude any right or duty listed in this section if the order states the reason in support of the restriction or exclusion. The court shall consider any domestic violence protection orders relating to the parties when determining whether to restrict or exclude any right or duty listed in this section.

SECTION 2. AMENDMENT. Section 14-09-24 of the North Dakota Century Code is amended and reenacted as follows:

14-09-24. Interference with visitation - Attorney's fees - Enforcement remedies and tools. In any proceeding ~~where~~ in which child visitation is properly in dispute between the parents of a ~~minor~~ child, the court shall award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the ~~minor~~ child. The court may use any remedy that is available to enforce a child support order and which is appropriate to enforce visitation.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 147

SENATE BILL NO. 2152

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

AN ACT to create and enact chapter 14-14.1 of the North Dakota Century Code, relating to the Uniform Child Custody Jurisdiction and Enforcement Act; to amend and reenact section 54-55-05 of the North Dakota Century Code, relating to the commission on uniform state laws; and to repeal chapter 14-14 of the North Dakota Century Code, relating to the Uniform Child Custody Jurisdiction Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 14-14.1 of the North Dakota Century Code is created and enacted as follows:

14-14.1-01. (102) Definitions. As used in the chapter:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision.
2. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
3. "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under sections 14-41.1-22 through 14-14.1-37.
4. "Commencement" means the filing of the first pleading in a proceeding.
5. "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
6. "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

7. "Initial determination" means the first child custody determination concerning a particular child.
8. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.
9. "Issuing state" means the state in which a child custody determination is made.
10. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
11. "Person acting as a parent" means a person, other than a parent, who:
 - a. Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
 - b. Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.
12. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.
13. "Physical custody" means the physical care and supervision of a child.
14. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.
15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
16. "Tribe" means an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.
17. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

14-14.1-02. (103) Proceedings governed by other law. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

14-14.1-03. (104) Application to Indian tribes.

1. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act [25 U.S.C. 1901 et seq.] is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

2. A court of this state shall treat a tribe as if it were a state for the purpose of applying sections 14-14.1-01 through 14-14.1-21.
3. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under sections 14-14.1-22 through 14-14.1-37.

14-14.1-04. (105) International application.

1. A court of this state shall treat a foreign country as if it were a state for the purpose of applying sections 14-14.1-01 through 14-14.1-21.
2. Except as otherwise provided in subsection 3, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under sections 14-14.1-22 through 14-14.1-37.
3. A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

14-14.1-05. (106) Effect of child custody determination. A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 14-14.1-07 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

14-14.1-06. (107) Priority. If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

14-14.1-07. (108) Notice to persons outside state.

1. Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.
2. Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.
3. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

14-14.1-08. (109) Appearance and limited immunity.

1. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by

reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

2. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.
3. The immunity granted by subsection 1 does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

14-14.1-09. (110) Communication between courts.

1. A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.
2. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
3. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
4. Except as otherwise provided in subsection 3, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
5. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

14-14.1-10. (111) Taking testimony in another state.

1. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
2. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
3. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

14-14.1-11. (112) Cooperation between courts - Preservation of records.

1. A court of this state may request the appropriate court of another state to:
 - a. Hold an evidentiary hearing;
 - b. Order a person to produce or give evidence pursuant to procedures of that state;
 - c. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
 - d. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and
 - e. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
2. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection 1.
3. Travel and other necessary and reasonable expenses incurred under subsections 1 and 2 may be assessed against the parties according to the law of this state.
4. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

14-14.1-12. (201) Initial child custody jurisdiction.

1. Except as otherwise provided in section 14-14.1-15, a court of this state has jurisdiction to make an initial child custody determination only if:
 - a. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
 - b. A court of another state does not have jurisdiction under subdivision a, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 14-14.1-18 or 14-14.1-19, and:
 - (1) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

1. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
2. If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.
3. If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 14-14.1-12 through 14-14.1-14. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.
4. A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 14-14.1-12 through 14-14.1-14, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to sections 14-14.1-12 through 14-14.1-14, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

14-14.1-16. (205) Notice - Opportunity to be heard - Joinder.

1. Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with section 14-14.1-07 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.
2. This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

3. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the laws of this state as in child custody proceedings between residents of this state.

14-14.1-17. (206) Simultaneous proceedings.

1. Except as otherwise provided in section 14-14.1-15, a court of this state may not exercise its jurisdiction under sections 14-14.1-12 through 14-14.1-21 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 14-14.1-18.
2. Except as otherwise provided in section 14-14.1-15, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under section 14-14.1-20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.
3. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:
 - a. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;
 - b. Enjoin the parties from continuing with the proceeding for enforcement; or
 - c. Proceed with the modification under conditions it considers appropriate.

14-14.1-18. (207) Inconvenient forum.

1. A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.
2. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

- a. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
 - b. The length of time the child has resided outside this state;
 - c. The distance between the court in this state and the court in the state that would assume jurisdiction;
 - d. The relative financial circumstances of the parties;
 - e. Any agreement of the parties as to which state should assume jurisdiction;
 - f. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - g. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
 - h. The familiarity of the court of each state with the facts and issues in the pending litigation.
3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
 4. A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

14-14.1-19. (208) Jurisdiction declined by reason of conduct.

1. Except as otherwise provided in section 14-14.1-15, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:
 - a. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
 - b. A court of the state otherwise having jurisdiction under sections 14-14.1-12 through 14-14.1-14 determines that this state is a more appropriate forum under section 14-14.1-18; or
 - c. No court of any other state would have jurisdiction under the criteria specified in sections 14-14.1-12 through 14-14.1-14.
2. If a court of this state declines to exercise its jurisdiction under subsection 1, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is

commenced in a court having jurisdiction under sections 14-14.1-12 through 14-14.1-14.

3. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection 1, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

14-14.1-20. (209) Information to be submitted to court.

1. Subject to section 14-07.1-18, in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:
 - a. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;
 - b. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and
 - c. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.
2. If the information required by subsection 1 is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.
3. If the declaration as to any of the items described in subdivision a, b, or c of subsection 1 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
4. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

14-14.1-21. (210) Appearance of parties and child.

1. In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.
2. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given under section 14-14.1-07 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
3. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
4. If a party to a child custody proceeding who is outside this state is directed to appear under subsection 1 or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

14-14.1-22. (302) Enforcement under Hague convention. Under this chapter a court of this state may enforce an order for the return of the child made under the Hague convention on the civil aspects of international child abduction as if it were a child custody determination.

14-14.1-23. (303) Duty to enforce.

1. A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter, or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter, and the determination has not been modified in accordance with this chapter.
2. A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

14-14.1-24. (304) Temporary visitation.

1. A court of this state which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:
 - a. A visitation schedule made by a court of another state; or
 - b. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.
2. If a court of this state makes an order under subdivision b of subsection 1, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in sections 14-14.1-12 through

14-14.1-21. The order remains in effect until an order is obtained from the other court or the period expires.

14-14.1-25. (305) Registration of child custody determination.

1. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the district court in this state:
 - a. A letter or other document requesting registration;
 - b. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
 - c. Except as otherwise provided in section 14-14.1-20, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.
2. On receipt of the documents required by subsection 1, the registering court shall:
 - a. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and
 - b. Serve notice upon the persons named pursuant to subdivision c of subsection 1 and provide them with an opportunity to contest the registration in accordance with this section.
3. The notice required by subdivision b of subsection 2 must state that:
 - a. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
 - b. A hearing to contest the validity of the registered determination must be requested within twenty days after service of notice; and
 - c. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
4. A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:
 - a. The issuing court did not have jurisdiction under sections 14-14.1-12 through 14-14.1-21;

- b. The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21; or
 - c. The person contesting registration was entitled to notice, but notice was not given in accordance with section 14-14.1-07, in the proceedings before the court that issued the order for which registration is sought.
5. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.
6. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

14-14.1-26. (306) Enforcement of registered determination.

1. A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.
2. A court of this state shall recognize and enforce, but may not modify, except in accordance with sections 14-14.1-12 through 14-14.1-21, a registered child custody determination of a court of another state.

14-14.1-27. (307) Simultaneous proceedings. If a proceeding for enforcement under sections 14-14.1-22 through 14-14.1-37 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under sections 14-14.1-12 through 14-14.1-21, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

14-14.1-28. (308) Expedited enforcement of child custody determination.

1. A petition under sections 14-14.1-22 through 14-14.1-37 must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.
2. A petition for enforcement of a child custody determination must state:
 - a. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;
 - b. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

14-14.1-30. (310) Hearing and order.

1. Unless the court issues a temporary emergency order under section 14-14.1-15, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:
 - a. The child custody determination has not been registered and confirmed under section 14-14.1-25 and that:
 - (1) The issuing court did not have jurisdiction under sections 14-14.1-12 through 14-14.1-21;
 - (2) The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21; or
 - (3) The respondent was entitled to notice, but notice was not given in accordance with section 14-14.1-07, in the proceedings before the court that issued the order for which enforcement is sought; or
 - b. The child custody determination for which enforcement is sought was registered and confirmed under section 14-14.1-25 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21.
2. The court shall award the fees, costs, and expenses authorized under section 14-14.1-32 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.
3. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.
4. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under sections 14-14.1-22 through 14-14.1-37.

14-14.1-31. (311) Warrant to take physical custody of child.

1. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.
2. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be

removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection 2 of section 14-14.1-28.

3. A warrant to take physical custody of a child must:
 - a. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
 - b. Direct law enforcement officers to take physical custody of the child immediately; and
 - c. Provide for the placement of the child pending final relief.
4. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.
5. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
6. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

14-14.1-32. (312) Costs, fees, and expenses.

1. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.
2. The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

14-14.1-33. (313) Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under sections 14-14.1-12 through 14-14.1-21.

14-14.1-34. (314) Appeals. An appeal may be taken from a final order in a proceeding under sections 14-14.1-22 through 14-14.1-37 in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under section 14-14.1-24, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

14-14.1-35. (315) Role of state's attorney.

1. In a case arising under this chapter or involving the Hague convention on the civil aspects of international child abduction, the state's attorney may take any lawful action, including resort to a proceeding under sections 14-14.1-22 through 14-14.1-37 or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:
 - a. An existing child custody determination;
 - b. A request to do so from a court in a pending child custody proceeding;
 - c. A reasonable belief that a criminal statute has been violated; or
 - d. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague convention on the civil aspects of international child abduction.
2. A state's attorney acting under this section acts on behalf of the court and may not represent any party.

14-14.1-36. (316) Role of law enforcement. At the request of a state's attorney acting under section 14-14.1-35, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a state's attorney with responsibilities under section 14-14.1-35.

14-14.1-37. (317) Costs and expenses. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the state's attorney and law enforcement officers under section 14-14.1-35 or 14-14.1-36.

SECTION 2. AMENDMENT. Section 54-55-05 of the North Dakota Century Code is amended and reenacted as follows:

54-55-05. No compensation for commissioners. The commissioners shall serve without compensation for services as commissioners. The commissioners who are appointed to the commission and the commissioners who have been elected life members of the national conference, except those who are appointed by virtue of having served five years on the commission but who have not served at least twenty years in the legislative assembly, are entitled to be reimbursed, from moneys appropriated for that purpose, for necessary expenses incurred in performing their duties at the rates provided in sections 44-08-04 and 54-06-09. Warrant-checks for expense reimbursement must be prepared by the office of management and budget upon vouchers submitted by the commissioners.

SECTION 3. REPEAL. Chapter 14-14 of the North Dakota Century Code is repealed.

Approved March 30, 1999
Filed March 30, 1999

CHAPTER 148

SENATE BILL NO. 2388

(Senators Cook, G. Nelson, W. Stenehjem)
(Representatives R. Kelsch, Mahoney)

ADOPTION INVESTIGATIONS

AN ACT to amend and reenact subsection 5 of section 14-15-11 of the North Dakota Century Code, relating to adoption investigations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹² **SECTION 1. AMENDMENT.** Subsection 5 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

5. An investigation and report is not required in cases in which a stepparent is the petitioner or the person to be adopted is an adult. The department of human services when required to consent to the adoption may give consent without making the investigation. If the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section. For the purpose of this section, "relative" means any person having the following relationship to the minor by marriage, blood, or adoption: grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt.

Approved April 7, 1999
Filed April 8, 1999

¹¹² Section 14-15-11 was also amended by section 1 of Senate Bill No. 2171, chapter 282.

EDUCATION

CHAPTER 149

SENATE BILL NO. 2065

(Appropriations Committee)

DICKINSON STATE UNIVERSITY STUDENT UNION BONDS

AN ACT to provide for the issuance and sale of self-liquidating, tax-exempt bonds for renovating and expanding the student union at Dickinson state university; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State 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 \$1,500,000 for the purpose of renovating and expanding the student union at Dickinson state university for the period beginning with the effective date of this Act and ending June 30, 2001. The bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 2. USE OF BOND PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 1, or so much of the sum as may be necessary, plus any available funds received from federal, private, or other sources, not to exceed a total of \$3,700,000 of all funds for the project, are hereby appropriated for the purpose of renovating and expanding the student union at Dickinson state university for the period beginning with the effective date of this Act and ending June 30, 2001. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

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

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 150**SENATE BILL NO. 2134**

(Education Committee)

(At the request of the Board of University and School Lands)

**COMMISSIONER OF UNIVERSITY AND SCHOOL
LANDS TERM**

AN ACT to amend and reenact section 15-02-02 of the North Dakota Century Code, relating to the term of office of the commissioner of university and school lands; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-02-02 of the North Dakota Century Code is amended and reenacted as follows:

15-02-02. Term of office - Vacancy. The term of office of the commissioner is ~~two~~ four years beginning July first of the year following the general election of the board members and ending June thirtieth of the fourth calendar year after appointment or until his a successor is appointed and qualified. The commissioner ~~is subject to removal at the pleasure of the board. In case of vacancy by death, removal, resignation, or any other cause, the board shall fill the vacancy by appointment~~ may be removed for cause at any time during the commissioner's term of office, by a vote of four or more board members. Upon vacancy by death, resignation, or removal, the board shall appoint a commissioner for the remainder of the four-year term.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 151**HOUSE BILL NO. 1083**

(Appropriations Committee)

(At the request of the Board of University and School Lands)

**BOARD OF UNIVERSITY AND SCHOOL LANDS
INVESTMENT FEES**

AN ACT to amend and reenact section 15-03-16 of the North Dakota Century Code, relating to continuing appropriations for the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-03-16. Appropriation for investments. There is hereby appropriated annually the sum necessary for the payment of fees for investments of controlled by the board of university and school lands, including accrued interest, and related investment management fees, trustee fees, consulting fees, appraisal fees, and custodial fees for the funds under the control of the board. Each payment must be made from the fund for which the investment is made. For the purpose of this section, the term investments includes all unclaimed property held in trust, financial securities, surface lands, and minerals for which the board is responsible.

Approved April 8, 1999

Filed April 8, 1999

CHAPTER 152

SENATE BILL NO. 2088

(Education Committee)

(At the request of the Board of University and School Lands)

SCHOOL TRUST LAND PAYMENTS, LEASING, AND SALES

AN ACT to create and enact a new section to chapter 15-04 of the North Dakota Century Code, relating to payments for county services benefiting school trust lands; and to amend and reenact sections 15-04-10, 15-06-26, and 15-07-20 of the North Dakota Century Code, relating to leasing and sale of school trust lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-04-10 of the 1997 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 appointed by the 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 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. ~~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.~~

SECTION 2. A new section to chapter 15-04 of the North Dakota Century Code is created and enacted as follows:

County services benefiting school trust lands - Payment. On or before March first of each year, the board of university and school lands shall pay a fee to the board of county commissioners of each county in which the state retains original grant lands. The board of county commissioners shall forward a prorated portion of any fee received under this section to the organized townships in which the original grant lands are located for use in the repair, maintenance, and construction of roads and bridges and shall use the remainder of the fee for the repair, maintenance, and construction of roads and bridges in unorganized townships in which original grant lands are located. The total fees paid under this section may not exceed five percent of the net revenue generated from the original grant lands in that county during the year preceding the payment. For purposes of this section, net revenue means the gross revenue from surface management, less any administrative and operating expenses, but does not include any moneys that must be deposited in a permanent trust fund.

SECTION 3. 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, the commissioner's deputy, or any other person appointed by 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 must be held at the county seat, in the county in which the land is situated. ~~Lands that have not been subdivided specially must be offered in tracts of one quarter section, and those subdivided must be sold in the smallest subdivision thereof. No~~ A tract may not 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.~~

SECTION 4. AMENDMENT. Section 15-07-20 of the North Dakota Century Code is amended and reenacted as follows:

15-07-20. Leasing of nongrant lands. The board of university and school lands may lease nongrant lands under ~~such~~ reasonable rules ~~and regulations~~ as it may establish. ~~Such~~ The rules ~~and regulations~~ may provide for leasing with or without advertisement or competitive bidding. Leases made under ~~the provisions of~~ this section must be for cash only, and the rental must be collected in advance except that the board may collect a share of a conservation reserve program payment paid by the federal government. ~~No~~ A lease of nongrant lands may not extend for a period of more than ~~four~~ five years, except ~~pasture lands may be leased for a period of five years and~~ any land accepted into the conservation reserve program may have a lease term that coincides with the term of the conservation reserve program contract if so provided in the lease. Leases may be renewed at the discretion of the board. When nongrant lands are leased without advertisement or competitive bidding, the board shall determine the rental by taking into consideration the nature and adaptability of the lands and the improvements thereon.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 153

HOUSE BILL NO. 1084

(Education Committee)

(At the request of the Board of University and School Lands)

SCHOOL TRUST LAND IMPROVEMENT DEPRECIATION

AN ACT to amend and reenact section 15-08-26 of the North Dakota Century Code, relating to depreciation of school trust land surface improvement costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-08-26 of the North Dakota Century Code is amended and reenacted as follows:

15-08-26. Removal of or payment for improvements upon termination of lease.

The lessee of any lands under the control of the board of university and school lands, within one hundred twenty days after the expiration date or cancellation date of a lease may remove any nonpermanent improvements placed upon ~~such the~~ lands by the lessee if ~~such the~~ removal can be accomplished without material damage to the land. Permanent improvements may not be placed on the land without written consent of the commissioner of university and school lands. A lessee requesting a permit to place permanent improvements on the land shall complete an application form prepared by the commissioner. ~~If a lessee desires payment for any approved permanent improvements, the commissioner shall determine the cost and may require the lessee to submit all documentation deemed necessary by the commissioner.~~ The cost of completing the permanent improvement is the lessee's expense. The commissioner may approve depreciation of all or a portion of the cost of the permanent improvement over a period not to exceed ten years. The commissioner may also require the lessee to submit all documentation deemed necessary by the commissioner to determine the cost. The cost may not include any reimbursements to the lessee and may be depreciated over a period not to exceed ten years. The next lessee or purchaser, in addition to paying the purchase price or rental of the land, shall pay to the preceding lessee the undepreciated cost, if any. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered or if the lessee fails to comply with the conditions of the lease agreement.

Permanent improvements placed on the property must be deemed the property of the state. For purposes of this section, permanent improvements include ~~such things as~~ buildings, wells, dams, waterholes, waterlines, and trees and nonpermanent improvements include ~~such things as~~ fences, corrals, water tanks, and feed bunks.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 154

SENATE BILL NO. 2215

(Senator Holmberg)

STATE BOARD OF HIGHER EDUCATION MEMBERSHIP

AN ACT to amend and reenact section 15-10-02 of the North Dakota Century Code, relating to membership of the state board of higher education; and to repeal sections 15-10-01.1, 15-10-03, 15-10-04, 15-10-05, 15-10-06, 15-18-03, 15-18-04.2, 15-18-05, 15-55-18, 15-55-19, and subsection 11 of section 57-15-06.7 of the North Dakota Century Code, relating to assumption of jurisdiction over junior colleges, appointments and membership of the state board of higher education, and tax levies for the financing of residual or other junior college fiscal obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-02 of the 1997 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~~ Faculty adviser.

1. The state board of higher education shall ~~consist~~ consists of ~~seven~~ eight members, all of whom must be ~~qualified electors and taxpayers of the state who must have resided in this state for five years immediately preceding their respective appointments.~~ The members of the board ~~must be appointed by the governor and confirmed by the senate.~~ Nominations must 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 may 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 may serve as a member of the board, nor may 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 a 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~~ in accordance with section 6 of article VIII of the Constitution of North Dakota.

2. The council of college faculties shall annually appoint one individual to serve as an adviser to the state board. The adviser may attend and participate in all meetings of the state board but may not vote.

¹¹³ **SECTION 2. REPEAL.** Sections 15-10-01.1, 15-10-03, 15-10-04, 15-10-05, 15-10-06, 15-18-03, 15-18-04.2, 15-18-05, 15-55-18, and 15-55-19 of the North Dakota Century Code and subsection 11 of section 57-15-06.7 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 17, 1999
Filed March 17, 1999

¹¹³ Section 57-15-06.7 was also amended by section 1 of Senate Bill No. 2382, chapter 499, and section 3 of Senate Bill No. 2358, chapter 501.

CHAPTER 155

HOUSE BILL NO. 1165

(Appropriations Committee)

(At the request of the State Board of Higher Education)

HIGHER EDUCATION INSTITUTION DEPOSITS

AN ACT to amend and reenact section 15-10-12 of the North Dakota Century Code, relating to deposit with the state treasurer of funds received by board of higher education institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-12. Board may accept gifts and bequests - ~~State treasurer to have custody of school funds~~ Deposit of funds. The state board of higher education may, subject to the limitations of section 15-10-12.1, receive donations, gifts, grants, and bequests offered or tendered to or for the benefit of any institution of higher education under its control or subject to its administration, and all moneys coming into the hands of the board as donations, gifts, grants, and bequests must be used for the specific purpose for which they are donated or given. A special revenue fund, for each institution of higher education under the control of the board or subject to its administration, must be maintained within the state treasury and all institutional income from tuition collections must be placed in the special fund for the use of the institution for which the money was raised. All rent, interest, or income from land, money, or property, donated or granted by the United States and allocated to specific institutions of higher learning under the terms of the Enabling Act and the Constitution of North Dakota must be deposited in the special revenue fund of each institution and expended in accordance with section 1 of article IX of the Constitution of North Dakota. Moneys in the special revenue fund are subject to legislative appropriations. All other funds, unless restricted by the terms of a grant, donation, or bequest, received by the institutions from federal, state, and local grants and contracts, indirect cost recoveries, special student fees, room and board fees and other auxiliary enterprise fees, student activity fees, continuing education program fees, internal service fund revenues, and all other revenues must be deposited in the institution special revenue funds. The state treasurer shall immediately transfer the funds deposited in the special revenue funds to institution accounts in the Bank of North Dakota. Biennial estimates of revenue and expenditures of the other funds by source of funds must be presented at the same time biennial budget requests for appropriations from the special revenue fund and state general fund are prepared and submitted to the office of the budget pursuant to section 15-10-15. Payments from each institution's general fund appropriation must be made in amounts as may be necessary for the operation and maintenance of each institution, except that at the close of the biennium the balance of funds not paid from the general fund appropriation must be deposited in the special revenue funds of the institutions. All

such appropriations are subject to proration in the same manner as other appropriations are prorated if insufficient funds are available to meet expenditures from the general fund. Sinking funds for the payment of interest and principal of institutional revenue bonds must be deposited pursuant to section 15-55-06.

Approved April 8, 1999

Filed April 8, 1999

CHAPTER 156

HOUSE BILL NO. 1398

(Representative Dalrymple)
(Senator Nething)

HIGHER EDUCATION INSTITUTION BUILDING PROJECTS

AN ACT relating to the authority of a state agency or institution to expand a building project; and to amend and reenact sections 15-10-12.1 and 15-55-10 of the North Dakota Century Code, relating to limitations on buildings and other campus improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-12.1. Acceptance of buildings and campus improvements - ~~Approval of budget section~~ Legislative approval. The state board of higher education may not authorize the construction of buildings and campus improvements on land under the control of the board which are financed by donations, gifts, grants, and bequests without the consent of the legislative assembly. During the time the legislative assembly is not in session, except for the six months preceding the convening of a regular session, and unless otherwise restricted by previous legislative action or other law, the state board of higher education may, with the approval of the budget section of the legislative council, may authorize the use of land under the control of the board and construct buildings and campus improvements thereon which are financed by donations, gifts, grants, and bequests. The budget section approval must include a specific dollar limit for each building or campus improvement project. The budget section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the budget section based upon the financial impact of such construction projects upon the state of North Dakota. The state board of higher education may, with the approval of the budget section, may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. The budget section may prescribe such conditions for the sale of the property as it ~~deems~~ determines necessary, including, ~~but not limited to,~~ requiring an appraisal and the advertisement for bids. If the state board of higher education submits a request to the budget section for approval, the legislative council shall notify each member of the legislative assembly of the date of the budget section meeting at which the request will be considered and provide a copy of the meeting agenda to each member of the legislative assembly. The chairman of the budget section shall allow any member of the legislative assembly an opportunity to present testimony to the budget section regarding any such request.

SECTION 2. AMENDMENT. Section 15-55-10 of the North Dakota Century Code is amended and reenacted as follows:

15-55-10. Limitation on buildings and other campus improvements and issuance of bonds. No building ~~or buildings~~ or other campus ~~improvements~~ improvement may be erected or constructed under this chapter, and no bonds may

be issued for the payment of the cost of any building ~~or buildings~~ or other campus ~~improvements~~ improvement under the terms of this chapter, ~~save and except for such specified buildings or other campus improvements as may be from time to time designated and unless~~ authorized by legislative act, nor may any ~~such building or buildings~~ or other campus ~~improvements~~ improvement be erected at a cost exceeding the amount fixed by the legislative assembly ~~in such act~~ as the maximum to be expended for ~~such buildings~~ the building or other campus ~~improvements~~ improvement undertaken under this chapter. ~~Such~~ The legislative authorization may be aggregated and the appropriation of the proceeds of the bonds for the construction of the buildings or improvements are not subject to cancellation under the provisions of section 54-44.1-11. ~~Authorization for the issuance of bonds by the 1969 legislative assembly and authorizations of previous legislative assemblies, however, expire on July 1, 1973, unless bonds have been issued for the construction of buildings or improvements in the amounts so authorized or a contract for the design of the building has been signed by the board of higher education prior to such date.~~ Authorization for the issuance of bonds by ~~succeeding the legislative assemblies~~ assembly expires four years after the effective date of the authorization unless bonds have been issued for the construction of buildings or improvements in the amounts so authorized or a contract for the design of the building has been signed by the board of higher education ~~prior to such~~ before the expiration date or the authorization specifies a different expiration date. Refunding bonds may be issued by the state board of higher education under the provisions of this chapter without legislative act to refund, at or ~~prior to~~ before the maturity of or pursuant to any privilege of prepayment reserved in or granted with respect to, any bonds issued to pay the cost of buildings or other campus improvements designated and authorized by legislative act.

SECTION 3. Authorization of expansion of building projects by legislative assembly or budget section. Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a building construction project beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 157

HOUSE BILL NO. 1186

(Education Committee)

(At the request of the State Board of Higher Education)

HIGHER EDUCATION LAW REVISIONS

AN ACT to amend and reenact sections 15-10-14.1, 15-10-17, and 15-62.3-01 of the North Dakota Century Code, relating to higher education reports, powers and duties of the state board of higher education, and definitions for the tuition assistance grant program; and to repeal sections 15-10-17.1, 15-10-18.1, 15-10-20, 15-10-23, 15-10-25.1, 15-10-34, 15-11-02, 15-11-05, 15-11-07, 15-11-21, 15-11-23, 15-11-24, 15-11-25, 15-11-31, 15-12-05, 15-12-13, 15-12-14, 15-12-15, 15-12-16, 15-12-17, 15-12-19, 15-13-05, 15-13-06, 15-13-07, 15-13-08, 15-13-09, 15-13-10, 15-13-11, and 15-13-12 of the North Dakota Century Code, relating to conduct of students, waiver of tuition for youth correctional center graduates, tuition at model schools, lease of building sites, out-of-state travel, authorization of contingency funds, colleges that may be united with the state university, courses of instruction, persons eligible as students, furnishing of supreme court reports to the law school, location of the university of North Dakota alumni building, control over the alumni building, contract for heat and light at the alumni building, assembly hall at the university, annual faculty report to state board of higher education, economic survey, state director of economic survey, collection of mineral samples, publishing of economic maps, publishing of agricultural experiment station reports, name of economic survey, annual report of normal school president, normal school degrees, separate funds for normal schools, normal schools' students' loan funds, administration of students' loan funds, participation in students' loan funds, rules governing students' loan funds, authorization to pledge rentals from residential units, and a dormitory at Mayville state university.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-14.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-14.1. ~~Biennial report~~ Higher education reports. The state board of higher education ~~may shall~~ submit a ~~biennial report to the governor and to the secretary of state for the educational institutions under its control as provided by law. If submitted, the report must cover enrollments, major functions and programs, and major goals and objectives, and the extent of achievement of those goals and objectives. The report must also include summaries of financial reports, a narrative explaining the significance of that data, and other information the board may choose~~ the reports required pursuant to section 15-10-14.2 and such other reports as may be requested by the legislative assembly or governor.

¹¹⁴ **SECTION 2. AMENDMENT.** Section 15-10-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-17. Specific powers and duties of board of higher education. The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter, including:

1. To appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the person or persons involved request that the meeting shall be open to other persons or the public.
2. To ~~have supervision and control of the grounds, buildings, and all other property of such institutions, and to authorize such institutions to maintain confidential records containing personal information regarding their prospective, current, or former students or regarding patients at the medical center rehabilitation hospital at the university of North Dakota, with the information in such records subject to release by the institution only upon a court order or the express or implied consent of the student or patient involved. A prospective, current, or former student shall be deemed to have consented to the release of all records to a prospective employer upon application for employment to that employer, provided the position is of such a nature as to require security clearance. The board may procure all necessary apparatus, instruments, and appurtenances for instruction in said schools within the limits of legislative appropriations therefor regulate the conduct of students, staff, faculty, and visitors, and authorize the employment of law enforcement officers, with concurrent jurisdiction with other law enforcement officers to enforce laws and regulations at its institutions.~~
3. To adopt rules; and regulations; ~~and bylaws~~ for the government of each of ~~such~~ the institutions and of all ~~the~~ their departments and branches ~~thereof~~.
4. To determine the ~~moral and educational~~ qualifications of applicants for admission to the various courses of instruction, to prescribe by rule criteria for the admission of students, and to ensure that the criteria for admission are applied to all applicants in a uniform and nondiscriminatory manner, regardless of the school or educational setting from which an applicant obtained a high school diploma or its equivalent. No instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of such institutions, and no sectarian or partisan test shall ever be allowed or exercised in the election of professors, teachers, or other officers of the institutions, or in the admission of students, or for any other purpose ~~whatsoever~~.

¹¹⁴ Section 15-10-17 was also amended by section 2 of House Bill No. 1443, chapter 562.

5. ~~To prescribe rules and regulations for the management of the libraries, cabinets, museums, laboratories, and all other property of the institutions under its control, and for the care and preservation thereof, with suitable penalties and forfeitures by way of damages for their violation, which may be collected by action in the name of the board in any court having jurisdiction.~~
6. To prescribe the books or works to be used in the several courses of instruction; and to confer such degrees and to grant such certificates or diplomas for the work done as are usual or appropriate in similar institutions.
7. 6. To confer upon the delegate to institution officers and faculty, through bylaws, the power to suspend or expel students for misconduct or for other causes prescribed in such bylaws.
8. 7. To act in consultation with the president of each institution to minister to provide for the needs and proper development of each institution in harmony with the best interests of the people of the state, and to improve higher and technical education in the state.
9. 8. To coordinate and correlate the work in the different institutions to prevent wasteful duplication and to develop cooperation among the institutions in the exchange of instructors and students.
10. 9. To fix registration or matriculation tuition and fees and other incidental fees to be paid by students in the various institutions under its control or in any department thereof when not otherwise provided by law.
11. ~~To fix and charge fees for instruction furnished in the professional schools and colleges and for extra studies.~~
12. 10. To make recommendations in regard to needed legislation for the institutions under its control.
13. 11. To establish a retirement program as an alternative to chapter 15-39.1 for employees of institutions under its control subject to the following guidelines:
 - a. Benefits under the program shall be provided through annuity contracts purchased by the board but which shall become the property of the participants;
 - b. The cost of the annuity contracts shall be defrayed by contributions made pursuant to rules of the state board of higher education;
 - c. Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota shall be transferred to the employee's account in the alternate program. Such election shall be made prior to July 1, 1980, and shall relinquish all rights the eligible employee or the employee's

beneficiary may have to benefits provided in chapters 15-39 and 15-39.2; and

- d. ~~Employees of Bismarck state college and university of North Dakota - Lake Region coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect prior to July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of the above-named colleges who becomes a member of the alternate retirement program may elect prior to July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2; and~~
- e. ~~Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system prior to March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.~~

The board shall provide for the administration of the alternate retirement program and establish rules therefor consistent with the foregoing guidelines. Nothing in this subsection shall be construed in derogation of any existing retirement programs approved by the board.

44. 12. To determine policy for purchasing by the institutions of higher education in coordination with the office of management and budget as provided by law.
45. 13. To establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 shall not apply to the early retirement program.
46. 14. To adopt rules to protect the confidentiality of ~~proprietary information received from sponsors of research conducted by the institutions as well as information generated by that research. No rule promulgated by the board may in any way limit or otherwise affect the applicability or implementation of any rule or regulation of the state department of health. Each grant or contract involving confidential information must be explained in the institution's report to the board of grants and contracts received and must be reviewed at the board's public meeting~~ student records, medical records, and, consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
47. 15. To authorize and encourage institutions of higher education under its control to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

SECTION 3. AMENDMENT. Section 15-62.3-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.3-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Accredited private institution" means an institution of higher learning located in North Dakota which is operated privately and not controlled or administered by any state agency or subdivision of the state, and which is accredited by the north central association of colleges and secondary schools or the accrediting association of Bible colleges.
2. "Agency" means the state board of higher education.
3. "Baccalaureate degree" means the degree customarily granted upon completion of a course of study normally requiring four academic years of college work.
4. "Final unmet financial need" means that need which remains after deducting any amounts available from the United States department of education in the form of a basic educational opportunity grant, or from the state of North Dakota in the form of a North Dakota student assistance grant or a tuition assistance grant, or both.
5. "Financial need" means the difference between (a) the student's financial resources available, including those available from the student's parents as determined by a need analysis ~~as defined in the 1977-78 student financial aid handbook issued by the~~ completed according to United

States department of education regulations, and (b) the student's anticipated annual expense while attending the accredited private institution. Financial need for each student must be calculated each year.

6. "Full-time resident student" means a North Dakota resident, pursuant to section 15-10-19.1, who is enrolled at an accredited private institution in a course of study including at least one hundred eighty instructional hours per semester.
7. "Half-time resident student" means a North Dakota resident who is enrolled at an accredited private institution in a course of study including at least ninety instructional hours per semester.
8. "Qualified student" means a full-time or half-time resident student who has established financial need and who is making satisfactory progress towards graduation.
9. "Tuition assistance grant" means a grant by the state of North Dakota to a qualified student.

SECTION 4. REPEAL. Sections 15-10-17.1, 15-10-20, 15-10-23, 15-10-25.1, 15-10-34, 15-11-02, 15-11-05, 15-11-07, 15-11-21, 15-11-23, 15-11-24, 15-11-25, 15-11-31, 15-12-05, 15-12-13, 15-12-14, 15-12-15, 15-12-16, 15-12-17, 15-12-19, 15-13-05, 15-13-06, 15-13-07, 15-13-08, 15-13-09, 15-13-10, 15-13-11, and 15-13-12 of the North Dakota Century Code and section 15-10-18.1 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 158

SENATE BILL NO. 2056

(Senator G. Nelson)
(Representative Dorso)

STATE BOARD OF HIGHER EDUCATION REPORTS

AN ACT to amend and reenact section 15-10-14.2 of the North Dakota Century Code, relating to reports by the state board of higher education to the legislative council and the governor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-14.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-14.2. Higher education system review - Plan - Report to legislative assembly council.

1. In ~~October 1996~~ 2002, and every six years thereafter, the state board of higher education shall ~~meet with~~ report to the legislative council and the governor ~~to review on~~ the status of the university system, ~~and to establish~~ including the long-term goals and objectives that will best serve the citizens of this state.
2. During each year ~~after the meetings~~, except those years when reports are required by subsection 1, the state board of higher education shall:
 - a. Prioritize the long-term goals, including defining and meeting student and institutional expectations regarding teaching and learning, the curriculum, the quality of campus life, and educational services;
 - b. Develop specific directions for the pursuit of the goals given priority;
 - c. Develop measurable criteria in order to determine the rate of progress toward achieving the goals given priority; and
 - d. Develop specific timelines within which the goals given priority must be attained.
3. In ~~October 1997~~ 2003, and every six years thereafter, the state board of higher education shall ~~meet with~~ report to the legislative council and the governor and ~~shall~~ present the directions, criteria, and timelines the board developed in accordance with subsection 2.
4. The state board of higher education shall also present to the legislative council and the governor options for generating within the university system the revenues needed to ensure attainment of the goals given priority.

5. The state board of higher education shall ~~meet with~~ report to the legislative council and the governor at least once during each ~~intervening~~ year, except those years when reports are required by subsections 1 and 3, and shall present a progress report regarding its goals and objectives, together with any other information requested by the legislative council or the governor.

Approved March 4, 1999

Filed March 5, 1999

CHAPTER 159

SENATE BILL NO. 2220

(Senators W. Stenehjem, Holmberg, St. Aubyn)
(Representatives Delmore, Kliniske, Poolman)

UND WINTER SPORTS FACILITY AUTHORIZATION

AN ACT to authorize construction of a winter sports facility at the university of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Lease of land - Construction of arena - Authority. The state board of higher education may negotiate the terms of and enter into an agreement with the university of North Dakota foundation or other entity for the lease of approximately thirty-two acres [12.95 hectares] of land, which was originally gifted to the university of North Dakota, and may do all things necessary and proper to approve the terms of the lease, the plans and design, the title of the building and parking area, and to facilitate the construction with private sector dollars of a winter sports facility at the university of North Dakota, and to provide for its subsequent operation and management.

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

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 160**SENATE BILL NO. 2314**

(Senators St. Aubyn, DeMers, Holmberg, W. Stenehjem)
(Representatives Poolman, Svedjan)

**STATE BOARD OF HIGHER EDUCATION
LEASE-PURCHASE AGREEMENT APPROVAL**

A BILL to authorize the state board of higher education to approve a lease-purchase agreement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Lease-purchase agreement - Approval. The state board of higher education may approve a lease-purchase agreement or modify an existing agreement between the university of North Dakota and a health services provider for the construction and lease of a medical facility to be constructed with private sector dollars on state land, and to do all things necessary and proper to approve the terms of the lease, the plans and design of the building, the title of the building, and the facilitation of its construction. The state board of higher education may approve any additional terms necessary to provide for the purchase of the medical facility by a payment-in-kind transfer provided the board deems the transfer to be in the best interests of the university and further provided that there is no negative fiscal impact to the university. For purposes of this section, payment in kind may include the subsequent donation of an existing university-owned building. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer and conveyance authorized by this section.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 161

SENATE BILL NO. 2029

(Legislative Council)
(Budget Section)

NONRESIDENT TUITION APPROVAL AND AGREEMENTS

AN ACT to amend and reenact sections 15-10-18, 15-10.1-02, and 15-10.1-03 of the North Dakota Century Code, relating to the approval by the budget section of nonresident tuition rates at institutions of higher education, reciprocal tuition agreements, and agreements for the remission of nonresident tuition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-18 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18. Tuition of nonresidents at schools under control of state board of higher education. At all state institutions of higher education, tuition must be charged and collected from each nonresident student in such amount as must be determined by the state board of higher education; ~~with the approval of the budget section of the legislative council.~~

SECTION 2. AMENDMENT. Section 15-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-10.1-02. Agreements - Reciprocal basis. ~~Notwithstanding the provisions of section 15-10-18, the~~ The state board of higher education is hereby authorized to may enter into agreements with public or private institutions of higher education, or the governing boards thereof, in this state and in contiguous states on a reciprocal basis in order to accomplish the following:

1. To enable a student at any institution party to such an agreement to take a specialized course or courses at a different institution from that in which he is enrolled, with or without the payment of tuition charges at the other institution.
2. To enable a student enrolled in any of the institutions party to the agreement to attend another institution party to such agreement without being required to pay nonresident tuition fees and in accordance with the terms of such agreement.

SECTION 3. AMENDMENT. Section 15-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15-10.1-03. Remission of nonresident tuition - Agreements. ~~Notwithstanding the provisions of section 15-10-18, the~~ The state board of higher education may enter into agreements for the remission of nonresident tuition for designated categories of students at state institutions of higher education. Such agreements must have as their purpose the mutual improvement of educational advantages for residents of this state and such other states or institutions of other states with whom agreements are made.

Approved March 19, 1999

Filed March 19, 1999

CHAPTER 162

HOUSE BILL NO. 1188

(Education Committee)

(At the request of the Education Standards and Practices Board)

TEACHERS' LICENSES

AN ACT to amend and reenact subsection 6 of section 15-19-01, sections 15-19-04, 15-21-01, 15-21-18, 15-22-02, subsections 3 and 4 of section 15-27.6-13, subsections 1 and 2 of section 15-27.6-14, subsection 10 of section 15-29-08, subsection 1 of section 15-34.1-03, subsection 2 of section 15-34.1-06, sections 15-34.1-07, 15-34.1-08, 15-34.1-09, subdivision c of subsection 3 of section 15-34.1-12, subsection 1 of section 15-34.1-12.1, sections 15-36-01, 15-36-01.1, 15-36-08, 15-36-11, 15-36-12, 15-36-14.1, 15-36-15, 15-36-16, 15-36-17, 15-36-18, 15-37-01, 15-38-16, 15-38-17, 15-38-18, 15-38-18.2, subsection 6 of section 15-38.1-02, subsection 11 of section 15-39.1-04, subsection 5 of section 15-40.1-07, section 15-40.1-08, subdivision b of subsection 2 of section 15-40.2-08, section 15-41-25, subsections 2 and 3 of section 15-41-27, subsection 1 of section 15-45-02, subsection 1 of section 15-47-27.2, sections 15-47-28 and 15-47-30, subsection 12 of section 15-47-38.2, sections 15-47-42 and 15-47-46, subsection 14 of section 54-44.3-20, and subsection 4 of section 54-52-01 of the North Dakota Century Code, or in the alternative to amend and reenact sections 15.1-01-02, 15.1-02-01, 15.1-06-07, and 15.1-11-01 of the North Dakota Century Code, relating to joint meetings involving the education standards and practices board and changing references from teachers' certificates to teachers' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 15-19-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Pupils exempt from the compulsory school attendance laws pursuant to subsection 5 of section 15-34.1-03 may enroll in correspondence courses offered through the division of independent study. These students may study their correspondence lessons in their learning environment under the supervision of a parent. The tests for the correspondence study must be administered by a ~~certified~~ licensed teacher employed either by the public school district in which the parent resides or a state-approved private or parochial school.

SECTION 2. AMENDMENT. Section 15-19-04 of the North Dakota Century Code is amended and reenacted as follows:

15-19-04. Duty of teachers, county and state officers, and institutions. The state board of public school education and the superintendent or a member of the department of public instruction designated by the superintendent shall approve the content of courses offered, ~~requirements for certification of teachers~~ monitor compliance with sections 15-41-25 and 15-47-46, approve credits granted for each course, and do all other things necessary to integrate the correspondence program into other programs administered or supervised by the department of public instruction. The division of independent study may advertise its correspondence

program, however, the state board of public school education and the superintendent of public instruction shall ensure that the program in no way competes with the public schools of this state for the enrollment of students, encourages students to leave the public schools, or duplicates the facilities of the public schools through offering correspondence courses to students having access to such courses in the public schools.

SECTION 3. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-21-01 of the North Dakota Century Code is amended and reenacted as follows:

15-21-01. Superintendent of public instruction - Qualifications - Term of office. There must be elected by the qualified electors of the state, at the time of choosing members of the legislative assembly, a superintendent of public instruction who must have attained the age of twenty-five years, who must have the qualifications of an elector for that office, and who must be the holder of a ~~teacher's certificate~~ professional teaching license of the highest grade issued in this state. ~~He~~ The superintendent shall have ~~his~~ an office at the seat of government, and ~~his~~ the superintendent's term of office is four years.

SECTION 4. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-21-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-21-18. Joint meetings of board of higher education, the education standards and practices board, state board for vocational and technical education, and state board of public school education. The state board of higher education, the education standards and practices board, and the members of the state board 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 executive director of the education standards and practices board, the superintendent of public instruction, and the commissioner of higher education for the purpose of coordinating their programs; cooperating in professional growth and development opportunities for kindergarten through grade twelve staff; and cooperating in any other manner that accomplishes the objectives of the ~~three~~ four boards involved.

SECTION 5. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-22-02 of the North Dakota Century Code is amended and reenacted as follows:

15-22-02. Qualifications. The county superintendent of schools must be a bachelor degree graduate of a regional or nationally accredited college or university approved for teacher education, must hold a valid ~~teacher's certificate~~ professional teaching license, and successful experience in teaching in an approved elementary or secondary school. This section is not retroactive but anyone serving as county superintendent on July 1, 1957, shall show evidence annually of work toward a bachelor degree in teacher education.

SECTION 6. AMENDMENT. If House Bill No. 1034 does not become effective, subsections 3 and 4 of section 15-27.6-13 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. "Open teaching positions" means a full-time or part-time teaching position that is not filled by a ~~certificated~~ licensed 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~~ licensure" means a teacher is qualified pursuant to the laws of this state and the rules of the education standards and practices board to serve as a teacher in a particular class or subject area.

SECTION 7. AMENDMENT. If House Bill No. 1034 does not become effective, subsections 1 and 2 of section 15-27.6-14 of the North Dakota Century Code are amended and reenacted as follows:

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~~ licensure. 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~~ licensure, 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~~ licensure. 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.

SECTION 8. AMENDMENT. If House Bill No. 1034 does not become effective, subsection 10 of section 15-29-08 of the 1997 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~~ professional teaching license issued by the 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 9. AMENDMENT. Subsection 1 of section 15-34.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. That the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. Except as provided in section 15-41-27, no such school shall be approved unless the teachers therein are ~~legally certificated~~ licensed in the state of North Dakota in accordance with section 15-41-25 and chapter 15-36, the subjects offered are in accordance with sections 15-38-07, 15-41-06, and 15-41-24, and such school is in compliance with all municipal and state health, fire, and safety laws.

¹¹⁵ **SECTION 10. AMENDMENT.** Subsection 2 of section 15-34.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. A parent is qualified to supervise a program of home education if the parent is ~~certified~~ licensed to teach in North Dakota; has a baccalaureate degree; or has 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.
- b. A parent who has a high school diploma or a general education development certificate is qualified to supervise home education but must be monitored by a ~~certificated~~ licensed teacher during the first two years the parent supervises home education or until the child being instructed completes the third grade, whichever is later. If the child being instructed receives a composite standardized achievement test score below the fiftieth percentile nationally, the monitoring required by this section must continue during the following school year or longer if the child has not achieved the fiftieth percentile. If testing is not required by section 15-34.1-07 in either of the first two years of monitoring, the time of monitoring may not be extended except upon the mutual consent of the parent and the monitor. Once a parent has completed the monitoring requirements for one child, the parent may not be monitored with respect to other children being educated at home.

SECTION 11. AMENDMENT. Section 15-34.1-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-07. Home education - Quality assurance. The following minimum indices of quality education are established:

¹¹⁵ Section 15-34.1-06 was also amended by section 1 of Senate Bill No. 2199, chapter 167.

1. A standardized achievement test used by the public school in the school district in which the parent resides or, if requested by the parent, a nationally normed standardized achievement test must be given to each child receiving home education in grades three, four, six, eight, and eleven. The test must be given in the child's learning environment or, at the option of the child's parent, in the public school and must be administered by a ~~certificated~~ licensed teacher. The cost of the test is the responsibility of the local school district, if it is a test used by the district. The cost of administering the test is the responsibility of the local school if it is district administered by a ~~certificated~~ licensed teacher employed by the district. The cost of the test is the responsibility of the parent if the test requested is not used by the local school district and the cost of having the test administered is the responsibility of the parent if it is administered by a ~~certificated~~ licensed teacher secured by the parent. Results of such testing must be filed with the local public school superintendent. If the 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 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 by a multidisciplinary assessment team according to guidelines established by the superintendent of public instruction. If the multidisciplinary assessment team evaluation determines that the child is not disabled according to the eligibility criteria established by the superintendent of public instruction, the parent providing instruction may continue to conduct home education, upon filing with the superintendent of the public school district, or county superintendent if there is no local superintendent, a plan of remediation to address the academic deficiencies of the child. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's plan of remediation. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirement of section 15-34.1-01 and the child no longer qualifies for home education. Such plan of remediation must be developed in consultation with and with the approval of a ~~state-certificated~~ state-licensed teacher selected by the parent. Costs associated with the consultation are the responsibility of the parent. The plan of remediation must remain in effect until such time as the child demonstrates reasonable academic progress by achieving a basic composite score on a standardized achievement test at or above the thirtieth percentile or a score indicating one year of academic progress as compared to a score on a test from the previous school year. The test may be one required by this section or one administered in an additional grade level, at the option of the parent. The plan of remediation may be amended from time to time in consultation with and with the approval of the ~~state-certificated~~ state-licensed teacher in order to accommodate the academic needs of the child. If a plan of remediation is no longer in effect and the child fails to demonstrate reasonable academic progress on a subsequent test required by this section, a plan of remediation must again be developed and instituted. If the evaluation of the multidisciplinary assessment team determines that the child is disabled, but does not have a developmental disability, according to the eligibility criteria established by the superintendent of public instruction, that the child requires specially designed instruction

due to the disability, and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home education, upon filing with the superintendent of the public school district an individualized education program plan, developed privately or through the local school district, indicating that the child's need for special education is being appropriately addressed by persons qualified to provide special education or related services. An annual determination of reasonable academic progress conducted by the local school district superintendent must be based on the child's individualized education plan. If such a plan is not filed, the parent is deemed to be in violation of the compulsory attendance requirements of section 15-34.1-01, and the child no longer qualifies for home education. A child who is once evaluated by a multidisciplinary team need not be reevaluated for a potential learning problem upon scoring below the thirtieth percentile on a subsequent standardized achievement test unless the reevaluation is performed pursuant to the provision of special education and related services.

3. Any ~~certificated~~ licensed teacher monitoring home education shall spend, at a minimum, an 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 spend, at a minimum, an additional one-half hour per month for each child under the teacher's supervision who is receiving home education. The time may be reduced proportionately if the child is in attendance in a public school or an approved nonpublic school. 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. If a monitor is required by section 15-34.1-06, the school district shall, at the request of the parent, provide the monitor at school district expense. A monitor retained by the parent must be compensated by the parent.

SECTION 12. AMENDMENT. Section 15-34.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-08. State aid. For purposes of allocating foundation aid and other state assistance to local school districts, a student receiving home education is deemed enrolled in the school district in which the student resides if the student is monitored by a ~~certificated~~ licensed teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the per student 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 in home education 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 13. AMENDMENT. Section 15-34.1-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-09. Monitoring or administration by a ~~certificated~~ licensed teacher. Any ~~certificated~~ licensed teacher who monitors a child receiving home education or who administers a standardized achievement test to a child receiving home education must notify the child's public school district of residence that the teacher is providing

such monitoring or administration. The parent of any child receiving home education who is monitored by or taking a test administered by a ~~certificated~~ licensed teacher not employed by a public school district is responsible for the costs of the monitoring or test administration.

¹¹⁶ **SECTION 14. AMENDMENT.** Subdivision c of subsection 3 of section 15-34.1-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. A description of the instructional plan to be followed during the school year, together with an attestation by a licensed psychologist and a North Dakota ~~certificated~~ licensed teacher that the instructional plan is appropriate for the child.

¹¹⁷ **SECTION 15. AMENDMENT.** Subsection 1 of section 15-34.1-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. On or before November first, February first, and May first of each school year, a parent providing home schooling to an autistic child under section 15-34.1-12 shall file with the superintendent of the child's school district of residence progress reports prepared by a licensed psychologist, an occupational therapist, a speech pathologist, and a ~~certificated~~ licensed teacher. If at any time the licensed psychologist, the occupational therapist, the speech pathologist, and the ~~certificated~~ licensed teacher agree that adequate progress is not being made, they shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team.

SECTION 16. AMENDMENT. Section 15-36-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-01. Teachers' ~~certificates~~ licenses - Criteria to be established. The education standards and practices board shall determine the criteria for teacher ~~certification~~ licensure for school terms beginning on or after July 1, 1995. The criteria shall be based upon standards which include considerations of character, adequate educational preparation, and general fitness to teach in the public schools of this state. After holding a public hearing, the board shall ~~issue~~ adopt rules concerning the issuance of ~~teachers' certificates~~ professional teaching licenses, and ~~certificates~~ licenses must be issued by the board's office in accordance with the rules. However, any teacher who has graduated from college in an accredited teacher education program on or before September 1, 1980, may not be required to earn any college credits in native American or other multicultural courses in order to be ~~certificated or recertificated~~ licensed or relicensed. Nothing in this section may be interpreted to affect the validity of ~~life~~ certificates in existence on July 1, ~~1973~~ 1999, nor does this section affect vocational education certificate qualifications as provided in chapter 15-20.1. Certificates in effect remain in effect until their expiration date. Subsequent renewals must be issued as licenses.

¹¹⁶ Section 15-34.1-12 was also amended by section 1 of House Bill No. 1064, chapter 168.

¹¹⁷ Section 15-34.1-12.1 was also amended by section 2 of House Bill No. 1064, chapter 168.

SECTION 17. AMENDMENT. Section 15-36-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-01.1. ~~Teachers' certificates~~ Professional teaching licenses - Student transcript. A student who has met all the criteria necessary to receive a ~~teacher's certificate~~ professional teaching license, 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 ~~educational~~ education standards and practices board showing that the student has met all the criteria necessary to receive a ~~teacher's certificate~~ professional teaching license except graduation. The transcript must indicate areas in which the student has a major or minor.

¹¹⁸ **SECTION 18. AMENDMENT.** Section 15-36-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-08. Fees for ~~certificates~~ licenses. The education standards and practices board must determine a fee for each ~~certificate~~ professional teaching license issued by this state; ~~and no certificate may be issued for a period of less than one school year.~~ The fees must be deposited and disbursed in accordance with section 54-44-12.

¹¹⁹ **SECTION 19. AMENDMENT.** Section 15-36-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-11. ~~Certificate~~ License required. A person must hold a valid North Dakota ~~teacher's certificate~~ professional teaching license in order to be permitted or employed to teach in any public school in this state.

¹²⁰ **SECTION 20. AMENDMENT.** Section 15-36-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-12. ~~Certificate~~ Professional teaching license must be exhibited to business manager of the school district - Completion of term after expiration of ~~certificate~~ license. No teacher is entitled to receive any compensation for the time the teacher teaches in a public school without a ~~certificate to teach which lawfully is issued and in force in the county in which the school is taught~~ professional teaching license. Prior to receiving a salary for the first month taught in a school district, a teacher must exhibit ~~the teacher's certificate~~ a professional teaching license to the business manager of the school district. If a ~~teacher's certificate~~ professional teaching license expires by its own limitations within six weeks of the close of the term, the teacher may finish the term without reexamination or renewal thereof. This section does not apply to any person providing teaching services in accordance with section 15-29-08.4.

¹¹⁸ Section 15-36-08 was also amended by section 1 of Senate Bill No. 2075, chapter 172.

¹¹⁹ Section 15-36-11 was also amended by section 1 of House Bill No. 1370, chapter 170.

¹²⁰ Section 15-36-12 was also amended by section 4 of House Bill No. 1035, chapter 164.

SECTION 21. AMENDMENT. Section 15-36-14.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-14.1. State's attorney - Duty to notify the education standards and practices board and the administrator's professional practices board. The state's attorney shall notify the education standards and practices board or the administrator's professional practices board in the case of a school administrator, in writing, whenever a ~~certificated~~ licensed teacher or administrator is convicted of a felony or a class A misdemeanor.

SECTION 22. AMENDMENT. Section 15-36-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-15. Revocation of ~~teacher's certificates~~ professional teaching license - Grounds - Effect. The 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~~ professional teaching license granted in this state upon any or all of the following grounds:

1. For any cause which would have authorized or required the education standards and practices board to refuse to grant the ~~certificate~~ license if the facts were known at the time when the ~~certificate~~ license was granted.
2. For incompetency, immorality, intemperance, or cruelty of the ~~certificate holder~~ licensee.
3. The ~~certificate holder~~ licensee 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 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 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~~ licensee 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~~ licensee, 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~~ license shall terminate the employment of the ~~certificate holder~~ licensee by the school in which the holder is employed when the ~~certificate~~ license is revoked, but the ~~holder~~ licensee must be paid to the time the notice of revocation 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 23. AMENDMENT. Section 15-36-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-16. Proceedings to suspend, revoke, or annul ~~certificate~~ license. The education standards and practices board or the administrator's professional practices board in the case of a school administrator, upon the receipt of a complaint alleging grounds to suspend for a period of time, revoke, or annul any ~~person's teacher's certificate~~ professional teaching license as set forth in 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. Upon completion of the proceedings, if the 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 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~~ professional teaching license of such person as provided in section 15-36-15.

SECTION 24. AMENDMENT. Section 15-36-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-17. Notice to be given when ~~teacher's certificate~~ professional teaching license is revoked. When a ~~teacher's certificate~~ professional teaching license is revoked, the education standards and practices board or the administrator's professional practices board shall notify the business manager of the school district 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 the business manager of the school district. The appropriate board also shall notify each county superintendent of schools in the state and shall enter an action in the case upon the records of the superintendent's office. Upon being notified that the ~~teacher's certificate~~ individual's professional teaching license has been revoked, the teacher or administrator shall return the ~~certificate~~ license to the appropriate board, and if the teacher or administrator neglects so to do, that the 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 25. AMENDMENT. Section 15-36-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-18. School guidance and counseling services - Providers. Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a valid North Dakota ~~teaching certificate~~ professional teaching license or will obtain one within seven years from the date of first employment under the provisions of this section. The education standards and practices board shall adopt rules relating to the background check of a person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The education standards and practices board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a ~~teaching certificate~~ professional teaching license as determined on the date of first employment under this section.

SECTION 26. AMENDMENT. Section 15-37-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-37-01. Teacher's oath. Every person who applies for a certificate license 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 education standards and practices board when the application for a certificate license is made, and the other copy must be retained by the person who subscribes to such oath or affirmation. No certificate license may be issued unless a duly witnessed or notarized oath or affirmation has been filed.

SECTION 27. AMENDMENT. Section 15-38-16 of the North Dakota Century Code is amended and reenacted as follows:

15-38-16. Responsibilities of the teaching profession. The legislative assembly hereby declares the profession of teaching in the public schools of this state to be a profession affected by high public interest, and that it is in the best interest of the state that such profession be recognized and that it accept its professional responsibilities in the development and promotion of high standards of ethics, conduct, and professional performance and practices. For the purposes of sections 15-38-16 through 15-38-19, the "profession of teaching" or "teaching profession" means persons engaged in teaching in the public schools and persons providing related administrative, supervisory, or other services in the public schools requiring certification licensure from the ~~department of public instruction~~ education standards and practices board.

SECTION 28. AMENDMENT. Section 15-38-17 of the 1997 Supplement to the North Dakota Century Code 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~~ July first of the year of the appointment. Vacancies ~~shall~~ must be filled for an unexpired term in the same manner as original appointments. ~~No~~ A person may not serve for more than two consecutive terms as a member of either board. 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~~ constitutes a quorum and a majority of the quorum ~~shall have~~ has 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~~ are entitled to receive twenty-five dollars for each day actually engaged in the service of the appropriate board and ~~shall~~ must be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. ~~No~~ A member of either board ~~shall~~ may not lose the member's regular salary or the above compensation while serving on official business of the appropriate board.

¹²¹ **SECTION 29. AMENDMENT.** Section 15-38-18 of the North Dakota Century Code is amended and reenacted as follows:

15-38-18. Duties of the education standards and practices board. It is the duty of the board to supervise the ~~certification~~ licensure 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 professional codes and standards, the 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 board shall adopt approved or revised codes and standards as rules in accordance with chapter 28-32. 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.

¹²² **SECTION 30. AMENDMENT.** Section 15-38-18.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-18.2. Education standards and practices board - Initial ~~certification~~ licensure of teachers - Background. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial ~~certification~~ licensure as a teacher. The board shall require each applicant for

¹²¹ Section 15-38-18 was also amended by section 2 of Senate Bill No. 2075, chapter 172.

¹²² Section 15-38-18.2 was also amended by section 3 of Senate Bill No. 2075, chapter 172.

~~certification~~ licensure to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

SECTION 31. AMENDMENT. Subsection 6 of section 15-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "Teachers" means and includes all public school employees ~~certificated~~ licensed under chapter 15-36 and employed primarily as classroom teachers.

¹²³ **SECTION 32. AMENDMENT.** Subsection 11 of section 15-39.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "Teacher" means:
 - a. All persons ~~certified~~ licensed to teach in this state by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state.
 - b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, the professional staff of the state board for vocational and technical education, the professional staff of the division of independent study, the executive director and professional staff of the North Dakota education association who are members of the fund on July 1, 1995, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association who are members of the fund on July 1, 1995.
 - c. The executive director and professional staff of the North Dakota council of school administrators who are members of the fund on July 1, 1995, and ~~certified~~ licensed staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

¹²³ Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2070, chapter 175.

- d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on July 16, 1989.

¹²⁴ **SECTION 33. AMENDMENT.** Subsection 5 of section 15-40.1-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.
 - b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.
 - c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per 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 students in average daily membership.
 - d. Subsection 4 times the number of students registered in the alternative education program times the educational support per student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more 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 students in the next lower category. 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~~ licensed 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 the student is enrolled for specific courses.

¹²⁴ Section 15-40.1-07 was also amended by section 4 of Senate Bill No. 2162, chapter 169.

School districts offering high school summer school programs are eligible for proportionate payments provided each course offered 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 summer education programs. The proportionate payment made under this section during the biennium for high school summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium.

¹²⁵ **SECTION 34. AMENDMENT.** Section 15-40.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-08. Elementary 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 students in a federal school, employing teachers holding valid ~~certificates or permits~~ licenses 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 1.28 adjusted by sixty-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 students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty 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 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 students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5. Beginning July 1, 1998, the factor is 1.28 adjusted by seventy-five 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 students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by sixty-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this

¹²⁵ Section 15-40.1-08 was also amended by section 6 of Senate Bill No. 2162, chapter 169.

category, as determined by the superintendent of public instruction, times the number of 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 student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. Beginning July 1, 1998, the factor is 1.09 adjusted by seventy-five 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 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 students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by sixty-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, 1998, the factor is .905 adjusted by seventy-five 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 students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by sixty-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. Beginning July 1, 1998, 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.
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 having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by sixty-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in

average daily membership in each classroom or for each teacher. Beginning July 1, 1998, the factor is 1.01 adjusted by seventy-five 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 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 1.01 adjusted by sixty-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 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 student provided in section 15-40.1-06. Beginning July 1, 1998, the factor is 1.01 adjusted by seventy-five 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, the amount of money resulting from multiplying the factor .50 adjusted by sixty-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 students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may 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 must receive a proportionately smaller per student payment. Beginning July 1, 1998, the factor is .50 adjusted by seventy-five 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.

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

SECTION 35. AMENDMENT. Subdivision b of subsection 2 of section 15-40.2-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Tutoring services upon claim of the admitting facility, provided that the tutoring services are delivered by a ~~certified~~ licensed and

qualified teacher according to rules established by the superintendent of public instruction.

¹²⁶ **SECTION 36. AMENDMENT.** Section 15-41-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-25. High schools - Teacher qualification. Except as provided in section 15-29-08.4, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 shall have a valid ~~teacher's certificate~~ professional teaching license and shall have a major or minor in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a ~~certificate~~ license to teach in the disciplines of trade, industrial, technical, and health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed may not affect the approval of the employing school district.

SECTION 37. AMENDMENT. If House Bill No. 1034 does not become effective, subsections 2 and 3 of section 15-41-27 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If the school uses telecommunications or other electronic means to deliver curricular programs, the programs are prepared by persons holding at least baccalaureate degrees and delivered in the presence of a person who holds a North Dakota ~~secondary~~ professional teaching certificate license or who meets or exceeds the average cutoff scores of the states that have normed the national teacher's examination.
3. The school employs at least one state ~~certificated~~ licensed high school teacher to serve in a supervisory capacity for each twenty-five students.

SECTION 38. AMENDMENT. Subsection 1 of section 15-45-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 39. AMENDMENT. Subsection 1 of section 15-47-27.2 of the 1997 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~~ licensed by the 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

¹²⁶ Section 15-41-25 was also amended by section 1 of Senate Bill No. 2142, chapter 184.

~~certification licensure~~ requirements. The term does not include superintendents, assistant superintendents, principals, supervisory personnel, substitutes, and all paraprofessionals.

SECTION 40. AMENDMENT. Section 15-47-28 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-28. Suspension of ~~teacher's certificate~~ professional teaching license for breach of contract. In the event of breach of contract on the part of a teacher or administrator, the education standards and practices board or the administrator's professional practices board shall suspend a ~~teacher's certificate~~ the individual's professional teaching license for a period not to exceed one year, during which time it is unlawful for such teacher or administrator to receive payment for teaching or administration in the public schools of North Dakota.

SECTION 41. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-47-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-30. Suspension and revocation of ~~teachers' certificates~~ professional teaching licenses for wearing religious garb. Any public school teacher or administrator who violates the provisions of section 15-47-29 shall have the ~~teacher's certificate~~ individual's professional teaching license suspended by the education standards and practices board or the administrator's professional practices board for one year, and upon the conviction of the teacher or administrator for a second such offense, the ~~teacher's certificate~~ individual's professional teaching license must be permanently revoked and annulled by the education standards and practices board or the administrator's professional practices board as provided by law.

SECTION 42. AMENDMENT. Subsection 12 of section 15-47-38.2 of the North Dakota Century Code is amended and reenacted as follows:

12. A school board dismissing a superintendent for cause shall report the dismissal to the ~~teachers' professional practices commission~~ administrator's professional practices board. 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.

¹²⁷ **SECTION 43. AMENDMENT.** Section 15-47-42 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-42. Status and authority of student and eminence-credentialed teachers. Any student teacher or eminence-credentialed teacher hired or assigned in this capacity must be given the same legal authority and status as if the student or eminence-credentialed teacher were a ~~certificated employee of licensed teacher~~ employed by the school district. The authority of the student or

¹²⁷ Section 15-47-42 was also amended by section 6 of House Bill No. 1035, chapter 164.

eminence-credentialed teacher extends to all aspects of student management or discipline, the handling of confidential student records, and to all other aspects of legal authority granted to ~~certificated~~ licensed teachers in the state. The student or eminence-credentialed teacher must be deemed a ~~certificated employee of licensed teacher employed by~~ the district with respect to acts performed by the student or eminence-credentialed teacher at the direction, suggestion, or consent of the district employees under whose supervision and control the student or eminence-credentialed teacher performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the student or eminence-credentialed teacher, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with section 15-29-08.4.

¹²⁸ **SECTION 44. AMENDMENT.** Section 15-47-46 of the 1997 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 professional teaching certificate license 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
 - c. An endorsement in kindergarten or elementary education from the 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 education standards and practices board.
2. A teacher who holds a professional teaching certificate license 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 professional teaching certificate license 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 professional teaching certificate license from the education standards and practices board and meets the requirements of the superintendent of public instruction may teach special education,

¹²⁸ Section 15-47-46 was also amended by section 7 of House Bill No. 1035, chapter 164.

foreign language, art, music, physical education, business education, and computer education in kindergarten through grade eight.

¹²⁹ **SECTION 45. AMENDMENT.** Subsection 14 of section 54-44.3-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. ~~Certificated~~ Licensed teachers engaged in teaching at the North Dakota youth correctional center, the school for the blind, and the school for the deaf.

¹³⁰ **SECTION 46. AMENDMENT.** Subsection 4 of section 54-52-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; ~~certified~~ licensed employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

¹³¹ **SECTION 47. AMENDMENT.** Section 15.1-01-02 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

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

1. Coordinating elementary and secondary education programs, vocational and technical education programs, and higher education programs.
2. Cooperating in the provision of professional growth and development opportunities for elementary and secondary teachers and administrators.
3. Ensuring cooperation in any other jointly beneficial project or program.

¹²⁹ Section 54-44.3-20 was also amended by section 12 of House Bill No. 1019, chapter 19, and section 1 of Senate Bill No. 2291, chapter 473.

¹³⁰ Section 54-52-01 was also amended by section 1 of Senate Bill No. 2071, chapter 478, and section 1 of House Bill No. 1257, chapter 482.

¹³¹ Section 15.1-01-02 was created by section 1 of House Bill No. 1034, chapter 196.

SECTION 48. AMENDMENT. Section 15.1-02-01 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-02-01. Superintendent of public instruction - Qualifications. The qualified electors of this state shall elect a superintendent of public instruction at the appropriate general election. The superintendent must be at least twenty-five years of age on the day of the election, have the qualifications of an elector for that office, and hold a valid North Dakota professional teaching certificate license on the day of the election and at all times during the superintendent's term of office.

¹³² **SECTION 49. AMENDMENT.** Section 15.1-06-07 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-06-07. Nonpublic high schools - Approval criteria. The superintendent of public instruction shall approve any nonpublic high school having an enrollment of fifty students or fewer, provided:

1. The school meets all statutory requirements regarding the subjects to be taught, the length of the school year, and health, fire, and safety standards;
2. If the school uses telecommunications or other electronic means to deliver curricular programs, the programs are prepared by individuals holding at least baccalaureate degrees and delivered in the presence of an individual who holds a North Dakota secondary professional teaching certificate license or who meets or exceeds the average cutoff scores of states that have normed the national teacher's examination;
3. The school employs at least one state certificated licensed high school teacher to serve in a supervisory capacity for each twenty-five students;
4. The average composite scholastic achievement test scores of students enrolled in the school or the students' scores achieved on comparable standardized tests meet or exceed the national average test scores; and
5. The school and its employees are governed by a board of directors that includes parental representation.

¹³³ **SECTION 50. AMENDMENT.** Section 15.1-11-01 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-11-01. County superintendent of schools - Employment - Qualifications.

¹³² Section 15.1-06-07 was created by section 6 of House Bill No. 1034, chapter 196.

¹³³ Section 15.1-11-01 was created by section 11 of House Bill No. 1034, chapter 196.

1. Except as provided in section 15.1-11-02, each board of county commissioners shall employ a county superintendent of schools on a full-time or a part-time basis. An individual hired under this section:
 - a. Must hold a baccalaureate degree from a regional or nationally accredited institution of higher education approved for teacher education.
 - b. Must hold a valid North Dakota ~~teacher's certificate~~ professional teaching license.
 - c. Must have experience teaching at an approved elementary, middle, or secondary school.
 - d. Must be approved by a majority of the school board presidents representing school districts having their administrative headquarters in the county.
 - e. Serves until the individual resigns or is discharged by the board of county commissioners at the direction of a majority of the school board presidents referenced in subdivision d.
2. The presidents of the school boards referenced in subsection 1 shall perform the duties of school boards with respect to the evaluation, renewal, and discharge of an individual hired under this section.

SECTION 51. MEASURES ENACTED BY THE FIFTY-SIXTH LEGISLATIVE ASSEMBLY RELATING TO EDUCATION STANDARDS AND PRACTICES BOARD. The legislative council may insert appropriate references in any measure enacted by the fifty-sixth legislative assembly which refers to the terms "certificate, certification, teacher's certificate, certificated teacher", or other similar terms referring to certificates issued by the education standards and practices board consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name change from certificate to license provided by this Act.

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 163

HOUSE BILL NO. 1434

(Representative Nichols)

STATE BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION POWERS AND DUTIES

AN ACT to amend and reenact section 15-20.1-03 of the North Dakota Century Code, relating to the powers and duties of the state board for vocational and technical education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.1-03. Powers and duties of state board relating to vocational education.

The state board shall have all authority necessary to cooperate with the United States department of education, or other department or agency of the United States of America in the administration of acts of Congress relating to vocational education, including the following powers and duties:

1. To administer any legislation enacted by the legislative assembly of this state pursuant to or in conformity with acts of Congress relating to vocational education.
2. To administer the funds provided by the federal government and by this state for the promotion of vocational education, and to contract with:
 - a. Any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state; or
 - b. Any public or private institution or agency, or political subdivision, of another state.
3. To formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education in this state.
4. To provide for the preparation of teachers.
5. To fix the compensation of such officers and assistants as may be necessary to administer the federal acts and the provisions of this chapter relating to vocational education and to pay the same and other necessary expenses of administration from any funds appropriated for such purpose.
6. To make studies and investigations relating to vocational education.
7. To promote and aid in the establishment of schools, departments, or classes, and to cooperate with local communities in the maintenance of vocational schools, departments, or classes.

8. To prescribe the qualifications and provide for the certification of teachers, directors, and supervisors.
9. To cooperate with governing bodies of school districts and with organizations and communities in the maintenance of classes for the preparation of teachers, directors, and supervisors of vocational education, to maintain classes for such purposes under its own direction and control, and to establish and control, by general regulations, the qualifications to be possessed by persons engaged in the training of vocational teachers.
10. To coordinate new and existing farm management programs offered by any state agency or entity.
11. To create and expand marketing clubs as adjuncts to new and existing farm management programs.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 164

HOUSE BILL NO. 1035

(Legislative Council)
(Education Services Committee)

EDUCATION TITLE REVISION CROSS-REFERENCES

AN ACT to amend and reenact section 11-10-10.5, subsection 1 of section 12.1-05-05, sections 15-20.2-04, 15-36-12, 15-41-25, 15-47-42, subsection 1 of section 15-47-46, section 15-59.2-02, subsection 5 of section 40-01.1-04, subsection 1 of section 54-07-01.2, and subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to cross references to statutes in the education title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-10.5 of 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~~ A board of county commissioners ~~may by majority vote shall 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, as provided for in section 15.1-11-01, or assign the duties of the county superintendent of schools, as provided for in section 15.1-11-02.~~

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-05-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in section ~~15-47-47~~ 15.1-19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of ~~such~~ a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting ~~his~~ the minor's welfare, including prevention and punishment of ~~his~~ the minor's misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

SECTION 3. AMENDMENT. Section 15-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-04. Center boards - Appointment of members - Terms - Compensation - Vacancies. An area vocational and technology center must be operated by a center board of not less than five members nor more than a total of one member for each participating district; provided, however, that each participating school district with three hundred or more high school students must be allowed one member for each three hundred high school students or fraction thereof with a limitation of not more than three members from any one school district. Center board members

must be members of the school boards. The terms of office of the members of center boards must be for at least one year and terminate upon the expiration of their terms on their respective school boards. Members are eligible for reappointment to center boards. Center board members shall receive the same compensation and expenses for attending center board meetings or for otherwise engaging in official business for the center as provided in section ~~15-29-05~~ 15.1-09-06 for members of school boards. Compensation and expenses of center board members must be paid out of center funds.

Vacancies on a center board must be filled by the school board whose representation was lost when the vacancy occurred.

¹³⁴ **SECTION 4. AMENDMENT.** Section 15-36-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-12. Certificate must be exhibited to business manager of the school district - Completion of term after expiration of certificate. No teacher is entitled to receive any compensation for the time the teacher teaches in a public school without a certificate to teach which lawfully is issued and in force in the county in which the school is taught. Prior to receiving a salary for the first month taught in a school district, a teacher must exhibit the teacher's certificate to the business manager of the school district. If a teacher's certificate expires by its own limitations within six weeks of the close of the term, the teacher may finish the term without reexamination or renewal thereof. This section does not apply to any person providing teaching services in accordance with subsection 21 of section ~~15-29-08.4~~ 15.1-09-33.

SECTION 5. AMENDMENT. Section 15-41-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-25. High schools - Teacher qualification. Except as provided in subsection 21 of section ~~15-29-08.4~~ 15.1-09-33, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 shall have a valid teacher's certificate and shall have a major or minor in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a certificate to teach in the disciplines of trade, industrial, technical, and health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed may not affect the approval of the employing school district.

¹³⁵ **SECTION 6. AMENDMENT.** Section 15-47-42 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-42. Status and authority of student and eminence-credentialed teachers. Any student teacher or eminence-credentialed teacher hired or assigned in this capacity must be given the same legal authority and status as if the student or eminence-credentialed teacher were a certificated employee of the school district. The authority of the student or eminence-credentialed teacher extends to all aspects

¹³⁴ Section 15-36-12 was also amended by section 20 of House Bill No. 1188, chapter 162.

¹³⁵ Section 15-47-42 was also amended by section 43 of House Bill No. 1188, chapter 162.

of student management or discipline, the handling of confidential student records, and to all other aspects of legal authority granted to certificated teachers in the state. The student or eminence-credentialed teacher must be deemed a certificated employee of the district with respect to acts performed by the student or eminence-credentialed teacher at the direction, suggestion, or consent of the district employees under whose supervision and control the student or eminence-credentialed teacher performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the student or eminence-credentialed teacher, and must be deemed an employee of the school district within the meaning of sections 32-12.1-05 and 39-01-08 relating to liability insurance carried by political subdivisions. For purposes of this section, "eminence-credentialed teacher" means a person providing teaching services in accordance with subsection 21 of section 15-29-08.4 15.1-09-33.

¹³⁶ **SECTION 7. AMENDMENT.** Subsection 1 of section 15-47-46 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2 through 4 or subsection 21 of section 15-29-08.4 15.1-09-33, 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
 - c. An endorsement in kindergarten or elementary education from the 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 education standards and practices board.

SECTION 8. AMENDMENT. Section 15-59.2-02 of the North Dakota Century Code is amended and reenacted as follows:

15-59.2-02. Organizational plan - Contents. The organizational plan to be submitted to the superintendent of public instruction must include the number of members on the multidistrict special education board, how each district will be represented, selection of officers, terms of office, meeting times, requirements for a quorum, and such other items as may be required by regulation of the superintendent of public instruction. Representatives on the multidistrict board must be appointed by the school boards of the participating districts. Compensation for board members must be the same as that allowed school board members pursuant to section ~~15-29-05~~ 15.1-09-06.

¹³⁶ Section 15-47-46 was also amended by section 44 of House Bill No. 1188, chapter 162.

¹³⁷ **SECTION 9. AMENDMENT.** Subsection 5 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 chapter 54-40.3 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~~ 15.1-09-01.
 - d. ~~A cooperative arrangement pursuant to chapter 15-27.7.~~
 - e. Sharing of officers with other school districts or other political subdivisions pursuant to chapter 11-10.3.
 - f. e. School district restructuring, annexation, or reorganization pursuant to ~~chapter 15-27.6, 15-27.2, or 15-27.3.~~
 - g. f. Transfer of a power or function of the school district to the county pursuant to chapter 54-40.5.
 - h. g. That any other action be taken that is permitted by law.
 - i. h. That no action be taken.

SECTION 10. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1997 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, 12-55.1-02, 12-59-01, ~~15-21-17~~, 15-38-17, 15-39.1-05.1, ~~15-65-02~~ 15.1-01-01, 15.1-05-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:

¹³⁷ Section 40-01.1-04 was also amended by section 4 of Senate Bill No. 2045, chapter 242, and section 65 of House Bill No. 1275, chapter 278.

- a. The aeronautics commission.
- b. The milk marketing board.
- c. The dairy promotion commission.
- d. The state banking board.
- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The 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 committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

SECTION 11. AMENDMENT. Subsection 4 of section 57-39.2-04 of the 1997 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~~ 15.1-07-12. 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 April 9, 1999

Filed April 9, 1999

CHAPTER 165

HOUSE BILL NO. 1151

(Education Committee)

(At the request of the State Board for Vocational and Technical Education)

POSTSECONDARY EDUCATIONAL INSTITUTION OPERATION AUTHORIZATION

AN ACT to create and enact a new section to chapter 15-20.4 of the North Dakota Century Code, relating to a voluntary application for an authorization to operate a postsecondary educational institution; to amend and reenact sections 15-20.4-01, 15-20.4-02, 15-20.4-03, 15-20.4-04, 15-20.4-05, 15-20.4-09, 15-20.4-10, 15-20.4-11, 15-20.4-12, 15-20.4-13, and 15-20.4-14 of the North Dakota Century Code, relating to authorization to operate postsecondary educational institutions and approval of agent permits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-01. Definitions. As used in this chapter:

1. ~~"Agent" means any person owning any interest in, employed by, or representing for remuneration, a postsecondary educational institution within or outside this state, who, by solicitation in any form made in this state, enrolls or seeks to enroll a resident of this state for education offered by such institution, or offers to award educational credentials, for remuneration, on behalf of any such institution, or who holds himself out to residents of this state as representing a postsecondary educational institution for any such purpose.~~
2. ~~"Agent's permit" means a nontransferable written authorization issued to a natural person by the board which allows that person to solicit or enroll any resident of this state for education in a postsecondary educational institution.~~
3. ~~"Authorization to operate" or like term means approval of the board to operate or to contract to operate a postsecondary educational institution in this state.~~
4. 2. "Board" means the state board for vocational and technical education.
5. 3. "Education" or "educational services" or like term includes, ~~but is not limited to,~~ any class, course, or program of training, instruction, or study.
6. 4. "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress, or

satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution operating in this state.

7. 5. "Entity" includes, ~~but is not limited to,~~ any company, firm, society, association, partnership, corporation, limited liability company, and trust.
8. 6. "Executive officer" means the director of vocational and technical education.
9. 7. "Postsecondary educational institution" includes, ~~but is not limited to,~~ an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, operating in this state, offering educational credentials, or offering instruction or educational services (primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance) for attainment of educational, professional, or vocational objectives.
40. 8. "To grant" includes awarding, selling, conferring, bestowing, or giving.
44. 9. "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.
42. 10. "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, from, or through which, education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

SECTION 2. AMENDMENT. Section 15-20.4-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-02. Exemptions. The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Certain education provided through short-term programs as determined by the board.
5. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided the education is not advertised or promoted as leading toward educational credentials.
6. Postsecondary educational institutions established, operated, and governed by this or any other state or its political subdivisions, as

determined by the board and any educational consortium that includes one or more of the institutions.

7. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
8. Schools of barbering regulated under chapter 43-04.
9. Schools of cosmetology regulated under chapter 43-11.
10. Schools of nursing regulated under chapter 43-12.1.
11. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.
12. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.
13. Postsecondary educational institutions not operating in this state.

SECTION 3. AMENDMENT. Section 15-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-03. Board powers and duties. The board has, in addition to the powers and duties now vested in it by law, the following powers and duties to:

1. Establish and require compliance with minimum standards and criteria for postsecondary educational institutions under this chapter. The standards and criteria must include quality of education, ethical and business practices, health and safety and fiscal responsibility, which applicants for authorization to operate; ~~or for an agent's permit,~~ shall meet:
 - a. Before such authorization ~~or permit~~ may be issued; and
 - b. To continue such authorization ~~or permit~~ in effect.

The criteria and standards developed will effectuate the purposes of this chapter, but will not unreasonably hinder legitimate educational innovation.

2. Prescribe forms and conditions for, receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions ~~and applications for agent's permits.~~ Authorization to operate an academic or professional postsecondary educational institution offering educational credentials shall be issued only upon approval of the executive officer and the commissioner of the board of higher education or his designee.
3. Maintain a list of postsecondary educational institutions ~~and agents~~ authorized to operate in this state under the provisions of this chapter. The list must be available for the information of the public, and must be sent to the superintendents of all school districts, to county

superintendents of schools, and to guidance counselors certified by the department of public instruction.

4. Negotiate and enter into interstate reciprocity agreements with similar agencies in other states, if in the judgment of the board such agreements are or will be helpful in effectuating the purposes of this chapter; provided, however, that nothing contained in any such reciprocity agreement may be construed as limiting the board's powers, duties, and responsibilities with respect to independently investigating or acting upon any application for authorization to operate, or any application for renewal of such authorization to operate, a postsecondary educational institution, ~~or an application for issuance or renewal of any agent's permit,~~ or with respect to the enforcement of any provision of this chapter, or any of the rules or regulations promulgated hereunder.
5. Receive and cause to be maintained as a permanent file, copies of academic records specified by the board in the event any postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation.
6. Promulgate such rules, regulations, and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter, and to hold such hearings as it may deem advisable in accordance with chapter 28-32 or as required by law in developing such rules, regulations, and procedures, or in aid of any investigation or inquiry.
7. Investigate as it may deem necessary, on its own initiative or in response to any complaint lodged with it, any person, group, or entity subject to, or reasonably believed by the board to be subject to, the jurisdiction of this chapter; and in connection therewith to subpoena any persons, books, records, or documents pertaining to such investigation. The board may require answers in writing under oath to questions propounded by the board, and may administer an oath or affirmation to any person in connection with any investigation. The board may, after hearing, revoke or suspend authorizations to operate ~~and agent permits~~. Subpoenas issued by the board are enforceable by any district court.
8. Require fees and bonds from postsecondary educational institutions ~~and agents~~ in such sums and under such conditions as it may establish; provided, that fees established may not exceed the reasonable cost of the service being provided.
9. Exercise other powers and duties implied but not enumerated in this section but in conformity with the provisions of this chapter which, in the judgment of the board, are necessary in order to carry out the provisions of this chapter.

SECTION 4. AMENDMENT. Section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-04. Minimum standards - Exceptions. All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution ~~demitted~~

operating in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or 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 educational institutions ~~domiciled~~ operating in this state and enrolling ~~a limited number of ten or fewer~~ students ~~as determined by the board~~.

SECTION 5. AMENDMENT. Section 15-20.4-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-05. Prohibition. ~~No~~ A person, ~~agent,~~ group, or entity of whatever kind, alone or in concert with others, may not:

1. Operate, in this state, a postsecondary educational institution not exempted from the provisions of this chapter, unless said institution has a currently valid authorization to operate issued pursuant to the provisions of this chapter.
2. ~~Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from the provisions of this chapter, whether such institution is within or outside this state, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to the provisions of this chapter.~~
3. ~~Accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter.~~
4. Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, at a facility or location in this state; ~~whether such person, agent, group, or entity is located within or without this state,~~ unless such person, ~~agent,~~ group, or entity observes and is in compliance with the minimum standards and criteria established by the board pursuant to subsection 1 of section 15-20.4-03, and the rules and regulations adopted by the board pursuant to subsection 6 of section 15-20.4-03.
5. 3. Use the term "university", "institute", or "college" without authorization to do so from the board.
6. 4. Grant, or offer to grant, educational credentials, without authorization to do so from the board.
7. 5. Seek to incorporate within the state as a postsecondary educational institution without first obtaining a currently valid authorization to operate from the board, which authorization must be presented to the secretary of state upon application for articles of incorporation.

SECTION 6. A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

Voluntary application for authorization to operate. Although a postsecondary educational institution not operating in this state is exempt from this chapter by section 15-20.4-02, the institution may subject itself to the requirements of this chapter by applying for and being awarded an authorization to operate by the board. An authorization to operate, as applied to a postsecondary educational institution not operating in this state, means approval of the board to offer to students in this state educational services leading to educational credentials.

SECTION 7. AMENDMENT. Section 15-20.4-09 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-09. Remedy of defrauded student - Treble damages. Any person defrauded by a misrepresentation made by an agent of a postsecondary educational institution, by any advertisement or circular issued by the a postsecondary educational institution or agent, or by any person who sells textbooks to the institution or to the pupils thereof, may recover from such institution; agent; or person three times the amount paid.

SECTION 8. AMENDMENT. Section 15-20.4-10 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-10. Board review. Any person aggrieved by a decision of the board respecting denial or revocation of an authorization to operate, ~~or of an agent's permit~~, or the placing of conditions thereon, whether on initial application or on application for renewal, and any person aggrieved by the imposition of a penalty by the board under section 15-20.4-12, has the right to a hearing and review of such decision by the board and to judicial review in accordance with chapter 28-32.

SECTION 9. AMENDMENT. Section 15-20.4-11 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-11. Violations - Civil penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who violates the provisions of section 15-20.4-05, or who fails or refuses to deposit with the board the records required by the board under this chapter, is subject to a civil penalty not to exceed one hundred dollars for each violation. Each day's failure to comply with the provisions of said sections is a separate violation. Such fine may be imposed by the board in an administrative proceeding or by any court of competent jurisdiction.

SECTION 10. AMENDMENT. Section 15-20.4-12 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-12. Violations - Criminal penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who willfully violates the provisions of section 15-20.4-05, or who willfully fails or refuses to deposit with the board the records required by the board under this chapter, is guilty of a class B misdemeanor. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state or a state's attorney pursuant to section 15-20.4-14.

SECTION 11. AMENDMENT. Section 15-20.4-13 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-13. Jurisdiction of courts - Service of process. Any postsecondary educational institution not exempt from this chapter, ~~whether or not a resident of or having~~ which has a place of business in this state, and which instructs or educates,

or offers to instruct or educate, enrolls or offers to enroll, or contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and if a natural person ~~his~~, the person's personal representative, to the jurisdiction of the courts of this state, concerning any claim for relief arising therefrom, and for the purpose of enforcement of this chapter by injunction pursuant to section 15-20.4-14. Service of process upon any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by the North Dakota Rules of Civil Procedure, with the same force and effect as if the summons had been personally served within this state. Nothing contained in this section limits or affects the right to serve any process as prescribed by the North Dakota Rules of Civil Procedure.

SECTION 12. AMENDMENT. Section 15-20.4-14 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-14. Enforcement - Injunction.

1. The attorney general of this state, or the state's attorney of any county in which a postsecondary educational institution ~~or an agent thereof~~ is found, at the request of the board or on ~~his~~ the attorney general's own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to section 15-20.4-12) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.
2. Whenever it appears to the board that any person, ~~agent~~, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules, regulations, or orders of the board, the board may, on its own motion or on the written complaint of any person, file a petition for injunction in the name of the board in any court of competent jurisdiction in this state against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this chapter, and all rules, regulations, and orders issued hereunder. It is not necessary that the board allege or prove that it has no adequate remedy at law. The right of injunction provided in this section is in addition to any other legal remedy which the board has, and is in addition to any right of criminal prosecution provided by law; provided, however, the board may not obtain a temporary restraining order without notice to the person, group, or entity affected. The existence of board action with respect to alleged violations of this chapter does not operate as a bar to an action for injunctive relief pursuant to this section.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 166

SENATE BILL NO. 2079

(Education Committee)

(At the request of the State Board of Public School Education)

STATE BOARD OF PUBLIC SCHOOL EDUCATION ANNEXATION APPEALS

AN ACT to amend and reenact subsection 6 of section 15-27.2-04 of the North Dakota Century Code, or in the alternative to amend and reenact subsection 11 of section 15.1-12-05 of the North Dakota Century Code, relating to state board of public school education annexation appeals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1034 does not become effective, subsection 6 of section 15-27.2-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall ~~consider and jointly effect the annexation if a majority of the members of each of such county committees approves~~ hear the annexation and the county committees shall vote separately on whether to approve or deny the annexation. If the annexation is approved by a majority of the members of one or both of the two county committees, or if the annexation is denied by both county committees and the petitioners express an intention to appeal the matter to the state board, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and ~~in such instance approval of the annexation shall have the same effect as approval by all county committees~~ denial.

SECTION 2. AMENDMENT. Subsection 11 of section 15.1-12-05 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11.
 - a. ~~If an annexation petition is considered by a single county committee, the decision of the county committee may be appealed to the state board.~~
 - b. ~~If an annexation petition is considered by more than one county committee and at least one county committee approves the annexation, the decision may be appealed to the state board.~~

- e. ~~If an annexation petition is considered by more than one county committee and denied by each~~ Regardless of how many county committee committees consider the annexation, the decision may ~~not~~ be appealed to the state board.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 167

SENATE BILL NO. 2199

(Senators Kilzer, B. Stenehjem, Wanzek)
(Representatives Carlisle, Carlson, R. Kelsch)

HOME EDUCATION EXTRACURRICULAR ACTIVITY PARTICIPATION

AN ACT to create and enact a new section to chapter 15-34.1 of the North Dakota Century Code, relating to participation in extracurricular activities by students receiving home education; to amend and reenact subsection 4 of section 15-34.1-06 of the North Dakota Century Code, relating to home education; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁸ **SECTION 1. AMENDMENT.** Subsection 4 of section 15-34.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Every parent supervising home education 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 education 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 fourteen days prior to the beginning of home education or within fourteen days of establishing the child's residency within the district. The statement must include:
 - a. The names and addresses of the parent who will supervise and the child who will receive home education;
 - b. The date of birth and grade level of each child receiving home education;
 - c. The intention of the parent to supervise home education;
 - d. The qualifications of the parent who will supervise home education;

¹³⁸ Section 15-34.1-06 was also amended by section 10 of House Bill No. 1188, chapter 162.

- e. A list of courses or extracurricular activities in which the child intends to participate in the public school district in which the child intends to enroll and the public school district offering the courses;
- f. A list of extracurricular activities in which the child intends to participate and the public school district or approved nonpublic school offering the activities;
- g. Proof of an immunization record as it relates to section 23-07-16; and
- g. ~~g.~~ h. Proof of identity as it relates to section 54-23.2-04.2.

SECTION 2. A new section to chapter 15-34.1 of the North Dakota Century Code is created and enacted as follows:

Home education - Participation in extracurricular activities.

1. A child receiving home education may participate in extracurricular activities either;
 - a. Under the auspices of the child's school district of residence; or
 - b. Under the auspices of an approved nonpublic school, if permitted by the administrator of the school.
2. For purposes of this section, a child participating under the auspices of the child's school district of residence is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the district.
3. For purposes of this section, a child participating under the auspices of an approved nonpublic school is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the school.
4. Once a child's parent has selected the public school district or the approved nonpublic school in which the child will participate for purposes of extracurricular activities, and has provided notification of the selection through the statement required by subsection 4 of section 15-34.1-06, the child is subject to the transfer rules as provided in the constitution and bylaws of the North Dakota high school activities association.

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

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 168

HOUSE BILL NO. 1064

(Representatives Boehm, R. Kelsch, Renner)
(Senator Freborg)

HOME EDUCATION OF AUTISTIC CHILDREN

AN ACT to amend and reenact sections 15-34.1-12 and 15-34.1-12.1 of the North Dakota Century Code, relating to the provision of home education to developmentally disabled children with autism.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁹ **SECTION 1. AMENDMENT.** Section 15-34.1-12 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-12. (~~Effective through June 30, 1999~~) Children with autism - Home school education. Notwithstanding any other law, a parent ~~or legal guardian~~ may provide home ~~schooling~~ education to a developmentally disabled child with autism if:

1. The child has been determined to be autistic by a licensed psychologist;
2. The child's parent ~~or legal guardian~~ qualifies to provide home ~~schooling~~ education under section 15-34.1-06;
3. The child's parent ~~or legal guardian~~ files with the superintendent of the child's school district of residence:
 - a. A notice that the child will ~~be receive~~ home schooled education;
 - b. A copy of the child's diagnosis of autism prepared and attested to by a licensed psychologist; and
 - c. ~~A description of the instructional plan to be followed during the school year, together with an attestation by a licensed psychologist and a North Dakota certified teacher that the instructional plan is appropriate for the child. An individualized education program developed and followed by the child's school district of residence and the child's parent; or, after providing written notice to the superintendent of the child's school district of residence, a substitute individualized education program, developed and followed, according to section 15-34.1-12.1, by an individualized education program team selected by and compensated by the child's parent.~~

¹³⁹ Section 15-34.1-12 was also amended by section 14 of House Bill No. 1188, chapter 162.

¹⁴⁰ **SECTION 2. AMENDMENT.** Section 15-34.1-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-34.1-12.1. (~~Effective through June 30, 1999~~) Children with autism - Home school education - Progress reports.

1. On or before November first, February first, and May first of each school year, a parent providing home ~~schooling~~ education to an autistic child under section 15-34.1-12 shall file with the superintendent of the child's school district of residence progress reports prepared by a ~~licensed psychologist, an occupational therapist, a speech pathologist, and a certified teacher~~ the individualized education program team selected under section 15-34.1-12. If at any time the ~~licensed psychologist, the occupational therapist, the speech pathologist, and the certified teacher~~ agree individualized education program team agrees that adequate progress is not being made, they the child is not benefiting from home education, the team shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team appointed by the superintendent of the child's school district of residence.
2. The superintendent of the child's school district of residence shall forward copies of all documentation required by this section to the superintendent of public instruction. ~~The superintendent of public instruction shall provide a report and recommendations regarding the home schooling of developmentally disabled children with autism under this section and section 15-34.1-12 to the legislative council.~~

Approved March 11, 1999
Filed March 11, 1999

¹⁴⁰ Section 15-34.1-12.1 was also amended by section 15 of House Bill No. 1188, chapter 162.

CHAPTER 169

SENATE BILL NO. 2162

(Education Committee)

(At the request of the Office of Management and Budget)

SCHOOL DISTRICT REIMBURSEMENT, SUPERINTENDENTS, AND OPERATION

AN ACT to provide for the reimbursement of certain reorganized districts; to create and enact a new section to chapter 15-29 of the North Dakota Century Code, or in the alternative to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to the joint employment of school district superintendents; to create and enact two new sections to chapter 15-40.1 of the North Dakota Century Code, relating to nonoperating schools and proportionate payments for summer school programs; to amend and reenact sections 15-35-01.1, 15-40.1-06, 15-40.1-07, 15-40.1-07.3, 15-40.1-08, subsection 1 of section 57-15-14.2, and section 57-15-17.1 of the North Dakota Century Code, relating to school construction approval, educational support per student, and payment factors; to provide an appropriation; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1034 does not become effective, a new section to chapter 15-29 of the North Dakota Century Code is created and enacted as follows:

School district superintendent - Joint employment - Accreditation. The superintendent of public instruction may not impose through the accreditation process any penalties or sanctions on a school district for employing a superintendent jointly with one or more other districts. The superintendent may not require, through the accreditation process, that an employee of a school district having fewer than one hundred students in high school spend more than thirty-three percent of the employee's time performing the duties of a school principal if the school district employs a superintendent jointly with one or more other districts.

SECTION 2. AMENDMENT. Section 15-35-01.1 of the 1997 Supplement to 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 may not be commenced unless approved by the superintendent of public instruction.
2. ~~No such~~ The superintendent of public instruction may not approve the construction, purchase, repair, improvement, renovation, or modernization of any school building or facility ~~may be approved~~ unless the school district proposing the project ~~demonstrates~~:

- a. Demonstrates the need for the project, the educational utility of the project, ~~fiscal need~~, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project, or demonstrates potential utilization of the project by a future reorganized school district; and
 - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.
3. 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, the school board may appeal the application to the state board of public school education and the decision of the state board approving or disapproving the application is final.
- ~~2.~~ 4. For purposes of this section, "facility" includes a parking lot, athletic complex, or any other improvement to real property owned by the school district.
 - ~~3.~~ 5. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15-35-01.2, unless the cost of the improvements exceeds seventy-five thousand dollars.

SECTION 3. AMENDMENT. Section 15-40.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-06. Declaration of legislative intent - Educational support per 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 student.~~ For purposes of this section, state funds include all appropriations for foundation aid, tuition apportionment, supplemental per student payments, special education, vocational education, transportation aid, school district technology, the governor's school, teacher centers, and the leadership in educational administration development consortium. For purposes of distributing state funds, the superintendent of public instruction shall determine the educational cost per student. In determining the educational cost per student, the ~~following criteria~~ superintendent may not be used use:
 - 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 student during the first year of the ~~1997-99~~ 1999-2001 biennium must be ~~one thousand nine hundred~~

- ~~fifty four~~ two thousand one hundred forty-five dollars and for the second year of the ~~1997-99~~ 1999-2001 biennium the educational support per student must be ~~two thousand thirty-two~~ two thousand two hundred thirty dollars and is the basis for calculating grants-in-aid on a 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 two hundred twenty dollars, which is the basis for calculating grants-in-aid on a 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 student established in subdivision a, which is the basis for calculating grants-in-aid on a 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 students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the 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 student established in subdivision a, which is the basis for calculating grants-in-aid on a 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 students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the 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 payments due school districts for tuition apportionment provided in section 15-44-03, and per student aid under this section, the amount of tuition apportionment, foundation aid, special education 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:

- a. The product of thirty-two mills 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 on the preceding June thirtieth is in excess of 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.

¹⁴¹ **SECTION 4. AMENDMENT.** Section 15-40.1-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07. High school 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 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 students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.625 adjusted by ~~sixty-five~~ seventy-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 students in grades nine through twelve registered in that school district, times the educational support per student as provided in section 15-40.1-06. ~~Beginning July 1, 1998, the factor is 1.625 adjusted by seventy 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.~~

¹⁴¹ Section 15-40.1-07 was also amended by section 33 of House Bill No. 1188, chapter 162.

2. For each high school district having seventy-five or more, but less than one hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.335 adjusted by ~~sixty-five~~ seventy-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 public instruction, times the number of high school students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. ~~Beginning July 1, 1998, the factor is 1.335 adjusted by seventy 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 public instruction.~~
3. For each high school district having one hundred fifty or more, but less than five hundred fifty students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.24 adjusted by ~~sixty-five~~ seventy-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 students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. ~~Beginning July 1, 1998, the factor is 1.24 adjusted by seventy 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.~~
4. For each high school district having a total high school enrollment of five hundred fifty or more students in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor 1.14 adjusted by ~~sixty-five~~ seventy-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 students in grades nine through twelve registered in that school district, times the educational support per student provided in section 15-40.1-06. ~~Beginning July 1, 1998, the factor is 1.14 adjusted by seventy 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.~~
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 students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has less than seventy-five students in average daily membership.
 - b. Subsection 2 times the number of students registered in the alternative education program, times the educational support per student provided in section 15-40.1-06, if the alternative education program has seventy-five or more, but less than one hundred fifty students in average daily membership.

- c. Subsection 3 times the number of students registered in the alternative education program, times the educational support per 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 students in average daily membership.
- d. Subsection 4 times the number of students registered in the alternative education program times the educational support per student as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more 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 students in the next lower category. 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 the student is enrolled for specific courses. ~~School districts offering high school summer school programs are eligible for proportionate payments provided each course offered 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 summer education programs. The proportionate payment made under this section during the biennium for high school summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium.~~

SECTION 5. AMENDMENT. Section 15-40.1-07.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.3. Per student payments - Reorganization of school districts.

1. If any school district receiving per student payments calculated under section 15-40.1-07 reorganizes with another school district under chapter 15-27.3 or 15-27.6 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school student as each separate school district received for each high school student prior to the reorganization, for a period of four years.
2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15-27.3 or 15-27.6 after July 31, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school and elementary student as each separate school

district received for each high school and elementary student prior to the reorganization, for a period of four years.

3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization.
4. Notwithstanding the provisions of any other law, no school district may receive less in per student payments for the first year of its reorganization than the total amount that the districts participating in the reorganization received in per student payments for the school year immediately preceding the reorganization. If less than a whole school district participated in a reorganization, the superintendent of public instruction shall prorate the payments to which the newly reorganized district is entitled under this subsection.

¹⁴² **SECTION 6. AMENDMENT.** Section 15-40.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-08. Elementary 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 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 1.28 adjusted by ~~sixty-five~~ seventy-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 students in that school in grades one through eight in average daily membership, up to a maximum of sixteen students, times the educational support per student provided in section 15-40.1-06. There must be paid .9 times each additional student in its school in grades one through eight in average daily membership times the educational support per student provided in section 15-40.1-06, except that no payment may be made for more than twenty 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 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 students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5. ~~Beginning July 4, 1998, the factor is 1.28 adjusted by seventy-five 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.~~

¹⁴² Section 15-40.1-08 was also amended by section 34 of House Bill No. 1188, chapter 162.

2. For each elementary school in school districts having under one hundred students in average daily membership in grades one through six, the amount of money resulting from multiplying the factor 1.09 adjusted by ~~sixty-five~~ seventy-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. ~~Beginning July 1, 1998, the factor is 1.09 adjusted by seventy-five 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 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 students in grades one through six, the amount of money resulting from multiplying the factor .905 adjusted by ~~sixty-five~~ seventy-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. ~~Beginning July 1, 1998, the factor is .905 adjusted by seventy-five 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 students in grades one through six, the amount of money resulting from multiplying the factor .95 adjusted by ~~sixty-five~~ seventy-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. ~~Beginning July 1, 1998, 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.~~
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 having students in grade seven or eight, there must be paid to each school the amount of money resulting from multiplying the factor 1.01 adjusted by ~~sixty-five~~ seventy-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 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 student provided in section 15-40.1-06, except that no payment may be made for more than thirty students in average daily membership in each classroom or for each teacher. ~~Beginning July 1, 1998, the factor is 1.01 adjusted by seventy-five 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 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 1.01 adjusted by ~~sixty-five~~ seventy-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 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 student provided in section 15-40.1-06. ~~Beginning July 1, 1998, the factor is 1.01 adjusted by seventy-five 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, the amount of money resulting from multiplying the factor .50 adjusted by ~~sixty-five~~ seventy-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 students in that school in average daily membership in each classroom or for each teacher times the educational support per student, as provided under section 15-40.1-06, except that no payment may be made for more than twenty-five students in average daily membership in each classroom or for each teacher. The full per student payment may 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 must receive a proportionately smaller per student payment. ~~Beginning July 1, 1998, the factor is .50 adjusted by seventy-five 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.~~

The superintendent of public instruction shall make proportionate payments to each public school district educating students who are also enrolled in nonpublic schools.

Every school district must receive at least as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.

SECTION 7. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Summer school programs - Proportionate payments.

1. A school district that offers high school summer school programs is entitled to receive proportionate payments provided each course offered 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.
2. A school district that offers remedial elementary summer school programs is entitled to receive proportionate payments provided the programs comply with rules adopted by the superintendent of public instruction.
3. The superintendent of public instruction may adopt rules regarding proportionate payments for remedial elementary summer school programs and high school summer school programs.
4. Proportionate payments made under this section during a biennium for summer school programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for foundation aid and transportation aid during the biennium, or eight million dollars, whichever is less. No more than seventy-five percent of the amount made available under this subsection may be used to support high school summer school programs and no more than twenty-five percent of the amount made available under this subsection may be used to support remedial elementary summer school programs.

SECTION 8. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Nonoperating school districts - Education of students - State payments.

1. Notwithstanding the provisions of any other law, a school district operating on the effective date of this Act may become a nonoperating district, provided:
 - a. The board of the district terminates the operation of all public schools in the district;
 - b. The board provides for the education in other school districts of all kindergarten, elementary, and secondary school students residing in the district; and
 - c. The board pays to other school districts educating its students the full per student cost of education in the receiving district.
2. The board of a nonoperating school district shall continue to employ, on a full-time or a part-time basis, one person qualified to manage the finances of the district.
3. The board of a nonoperating school district is governed by all laws applicable to the board of an operating school district.
4. In lieu of all other state payments, a nonoperating school district under this section is entitled to receive an amount equal to the per student payment determined under section 15-40.1-06 and multiplied by the

number of students ages six through seventeen who reside in the district, as established by the latest available school district census, less the product of thirty-two mills times the latest available net assessed and equalized valuation of property of the school district.

5. A school district may be nonoperational for no more than three school years.
6. At or before the conclusion of the three-year period, the nonoperating school district must become, through reorganization or dissolution, part of one or more operating school districts.
7. A school district that has become a nonoperating district and has accepted state payments, as provided for by this section, may not revert to an independent operating district.

SECTION 9. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

School district superintendent - Joint employment - Accreditation. The superintendent of public instruction may not impose through the accreditation process any penalties or sanctions on a school district for employing a superintendent jointly with one or more other districts. The superintendent may not require, through the accreditation process, that an employee of a school district having fewer than one hundred students in high school spend more than thirty-three percent of the employee's time performing the duties of a school principal if the school district employs a superintendent jointly with one or more other districts.

¹⁴³ **SECTION 10. AMENDMENT.** Subsection 1 of section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A school board of any school district may levy an amount sufficient to cover general expenses including the costs of the following:
 - a. Board and lodging for high school students as provided in section 15-34.2-06.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section 15-40.2-12.
 - d. Special education program as provided in section 15-59-08.
 - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
 - f. A final judgment obtained against a school district.

¹⁴³ Section 57-15-14.2 was also amended by section 1 of House Bill No. 1196, chapter 500.

- g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.
- h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
- i. Unemployment compensation benefits.
- j. The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States environmental protection agency and any repair, replacement, or remodeling that results from such removal or abatement, any remodeling required to meet specifications set by 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 any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school.
- k. Participating in cooperative vocational education programs approved by the state board.
- l. Maintaining a vocational education program approved by the state board and established only for that school district.
- m. Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses.
- n. Establishing and maintaining school library services.
- o. Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
- p. Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term.
- q. Establishing, maintaining, and conducting a public recreation system.
- r. The district's share of contribution to finance an interdistrict cooperative agreement authorized by section 15-47-40.1.

¹⁴⁴ **SECTION 11. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. Multiyear asbestos abatement and required remodeling levy by school district.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of ~~providing~~:
 - a. Providing funds for the removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances;
 - b. Any remodeling required to meet specifications set by 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
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school.
2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsection 3, must be placed in a separate fund known as the asbestos abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos abatement.
3. All revenue accruing from up to five mills of the fifteen mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.
4. Any moneys remaining in the asbestos abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos abatement project and any funds remaining in the required remodeling fund after completion of the remodeling projects must be transferred to the general fund of the school district upon the order of the school board.

¹⁴⁴ Section 57-15-17.1 was also amended by section 2 of House Bill No. 1196, chapter 500.

SECTION 12. REIMBURSEMENT - REORGANIZED DISTRICTS. In distributing per student payments for the 1997-99 biennium, the superintendent of public instruction shall ensure that no school district reorganized after June 30, 1997, and before July 1, 1999, receives less in per student payments for the first year of its reorganization than the districts participating in the reorganization received in per student payments for the school year immediately preceding the reorganization.

SECTION 13. LEGISLATIVE COUNCIL STUDY OF EDUCATIONAL EQUITY AND FUTURE EDUCATIONAL DELIVERY. The legislative council shall study the provision of education to public school students in this state and shall examine the manner in which education to public school students will be delivered in the ensuing five, ten, and twenty years. Within this study, the council shall address demographic changes as they affect equity of educational opportunities with respect to courses, facilities, and extracurricular activities; equity with respect to teacher availability and qualifications; equity with respect to the organization and administration of school districts; and taxpayer equity in both rural and urban school districts. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 14. APPROPRIATION - CONTINGENT DISTRIBUTIONS.

1. a. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$3,500,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing supplemental payments to school districts, for the biennium beginning July 1, 1999, and ending June 30, 2001.
- b. During the first year of the biennium, the superintendent shall distribute \$1,750,000 of the appropriated amount as supplemental per student payments to each school district in the state on the basis of average daily membership and \$1,000,000 of the appropriated amount to assist school districts whose 1999-2000 fall enrollment is less than the district's 1994-1995 fall enrollment. The superintendent shall base the latter payments on each eligible school district's proportionate share of the total statewide decline during the five-year period, provided that no school district is eligible to receive payments for declining enrollments in excess of five hundred students.
- c. During the second year of the biennium, the superintendent shall distribute the remaining \$750,000 as supplemental per student payments to each school district in the state on the basis of average daily membership.
2. a. If any funds appropriated by the legislative assembly to the grants - foundation aid and transportation line item remain after completion of all statutory obligations, to the extent of legislative appropriations, the superintendent of public instruction shall distribute the first \$1,000,000 of such contingent funds as supplemental per student payments to each school district in the state on the basis of average daily membership.
- b. The superintendent shall distribute the next \$1,000,000 of such contingent funds to assist school districts experiencing declines in

student enrollment under the terms provided for by subdivision b of subsection 1.

- c. The superintendent shall distribute the next \$2,000,000 of such contingent funds to school districts eligible to receive reorganization bonuses, as provided for by Senate Bill No. 2441, as approved by the fifty-sixth legislative assembly, and shall distribute any remaining funds as supplemental per student payments to each school district in the state on the basis of average daily membership.

SECTION 15. REORGANIZATION BONUSES - LEGISLATIVE

INTENT. If insufficient funds exist to fully reimburse all school districts eligible for reorganization bonuses, as provided for by Senate Bill No. 2441, as approved by the fifty-sixth legislative assembly, the fifty-seventh legislative assembly shall consider introduction of an emergency measure to adopt a deficiency appropriation in an amount necessary to provide the full reimbursement.

SECTION 16. EMERGENCY. Sections 2, 7, and 12 of this Act are declared to be an emergency measure.

Approved April 20, 1999

Filed April 20, 1999

CHAPTER 170

HOUSE BILL NO. 1370

(Representatives Nottestad, Drovdal, Grumbo, L. Thoreson)
(Senators Holmberg, Wardner)

TEACHING CERTIFICATE REQUIREMENTS

AN ACT to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to enforcement of requirements concerning teaching certificates; and to amend and reenact section 15-36-11 of the North Dakota Century Code, relating to requirements to hold teaching certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁵ **SECTION 1. AMENDMENT.** Section 15-36-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-11. Certificate required. ~~A person~~ Except as provided by section 2 of this Act, an individual must hold a valid North Dakota teacher's certificate in order to be permitted or employed to teach in any public school in this state.

SECTION 2. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Exception to certificate requirement. An individual without a valid certificate who is teaching under contract with a school may teach and be employed to teach if approved by the education standards and practices board. The education standards and practices board shall establish by rule the terms and conditions of approval. The terms and conditions may include payment of fines to the board, enrollment in and completion of continuing education courses, and a deadline for filing a completed application. Approval to teach and be employed to teach without a valid North Dakota certificate may only be granted if the individual has previously held a valid North Dakota certificate, currently holds a valid teaching certificate or license in another jurisdiction, or has filed a completed application with the board.

Approved March 25, 1999
Filed March 25, 1999

¹⁴⁵ Section 15-36-11 was also amended by section 19 of House Bill No. 1188, chapter 162.

CHAPTER 171

HOUSE BILL NO. 1274

(Representatives Brandenburg, Grumbo, Haas, Nottestad, Wikenheiser)
(Senator Wardner)

TEACHER CERTIFICATION

AN ACT to create and enact two new sections to chapter 15-36 of the North Dakota Century Code, relating to the interim reciprocal certification of teachers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Interim reciprocal teaching certificate - Period of validity.

1. The education standards and practices board shall grant an interim reciprocal teaching certificate in accordance with sections 15-47-46 and 15-41-25 to an individual who holds a valid regular teaching license or certificate from another state, provided:
 - a. The certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught in public high school;
 - b. The certification requires the completion of a professional education sequence from a state-approved teacher education program, including supervised student teaching;
 - c. The individual submits to a background check as required of initial applicants in section 15-38-18.2;
 - d. The background check reveals nothing for which a North Dakota applicant would be denied initial certification; and
 - e. The individual submits a plan for meeting all requirements necessary to become a certificated teacher in this state.
2. An interim reciprocal certificate granted under this section is valid for two years. The individual shall submit evidence of progress on the individual's educational plan to the education standards and practices board at the end of the two-year period. The interim reciprocal certificate may be renewed for one additional two-year period if satisfactory progress is demonstrated.
3. Notwithstanding any other law, an interim reciprocal certificate granted under this section is the equivalent of a teaching certificate granted under chapter 15-36.

SECTION 2. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Reciprocal acceptance of teaching certificates - Report. On or before July 1, 2001, the education standards and practices board shall pursue the reciprocal acceptance of teaching certificates issued by other states. The education standards and practices board shall present a progress report regarding implementation of the program to the legislative council or to a committee designated by the council before October 1, 2000.

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

Approved April 14, 1999
Filed April 14, 1999

CHAPTER 172

SENATE BILL NO. 2075

(Education Committee)

(At the request of the Education Standards and Practices Board)

TEACHING CERTIFICATES, FEES, AND ENDORSEMENTS

AN ACT to amend and reenact sections 15-36-08, 15-38-18, 15-38-18.2, and 15-41-25 of the North Dakota Century Code, relating to provisional teaching certificates, application fees, and education standards and practices board equivalency endorsements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁶ **SECTION 1. AMENDMENT.** Section 15-36-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-08. Fees for certificates. The education standards and practices board must determine a fee for each certificate issued by this state; ~~and no.~~ Except for provisional teaching certificates which are valid for forty days and issued pursuant to rules adopted by the board, a certificate may not be issued for a period of less than one school year. The fees must be deposited and disbursed in accordance with section 54-44-12.

¹⁴⁷ **SECTION 2. AMENDMENT.** Section 15-38-18 of the North Dakota Century Code is amended and reenacted as follows:

15-38-18. Duties of the education standards and practices board. It is the duty of the board to supervise the certification of teachers; ¹ to set standards for and approve teacher preparation programs; ² to issue minor equivalency endorsements; to develop and revise, consistent with state law, professional codes or standards relating to ethics, conduct, and professional performance and practices; ³ and to provide recommendations for in-service education of persons engaged in the profession of teaching in the public schools. In the development of professional codes and standards, the 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 board shall adopt approved or revised codes and standards as rules in accordance with chapter 28-32. 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

¹⁴⁶ Section 15-36-08 was also amended by section 18 of House Bill No. 1188, chapter 162.

¹⁴⁷ Section 15-38-18 was also amended by section 29 of House Bill No. 1188, chapter 162.

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.

¹⁴⁸ **SECTION 3. AMENDMENT.** Section 15-38-18.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-18.2. Education standards and practices board - Initial certification of teachers - Application fee - Background. The education standards and practices board may charge an application fee established by the board by rule. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial certification as a teacher. The board shall require each applicant for certification to file a complete set of the applicant's fingerprints, taken by a law enforcement officer, and all other information necessary to complete a state and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. The board may adopt by rule, procedures for issuing forty-day provisional teaching certificates to applicants for initial licensure pending completion of the background check. A provisional teaching certificate may be renewed upon approval of the board. An applicant for a provisional teaching certificate may be charged a fee established by the board by rule, but no fee may be imposed for the renewal of a provisional teaching certificate.

SECTION 4. AMENDMENT. Section 15-41-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-25. High schools - Teacher qualification. Except as provided in section 15-29-08.4, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 ~~shall~~ must have a valid teacher's certificate and ~~shall~~ must have a major or minor or a minor equivalency endorsement issued by the education standards and practices board in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a certificate to teach in the disciplines of trade, industrial, technical, ~~and~~ or health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed may not affect the approval of the employing school district.

¹⁴⁸ Section 15-38-18.2 was also amended by section 30 of House Bill No. 1188, chapter 162.

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

Approved April 13, 1999
Filed April 14, 1999

CHAPTER 173

SENATE BILL NO. 2074

(Education Committee)

(At the request of the Education Standards and Practices Board)

TEACHING CERTIFICATE DENIAL OR REVOCATION

AN ACT to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to grounds for the automatic denial or revocation of teaching certificates; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching certificate.

1. Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching certificate and shall revoke immediately the teaching certificate of an individual, other than an administrator, who has been found guilty of a crime against a child or a sexual offense. Notwithstanding any other law, the administrator's professional practices board shall revoke immediately the teaching certificate of an administrator who has been found guilty of a crime against a child or a sexual offense.
2. An individual, other than an administrator, who is denied a teaching certificate or who has had a teaching certificate revoked under subsection 1 may file a request with the education standards and practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. An administrator who has had a teaching certificate revoked under subsection 1 may file a request with the administrator's professional practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.
3. A final decision denying a teaching certificate or revoking a teaching certificate under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching certificate or revoking a teaching certificate unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.
4. The education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, may impose a fee against a certificate holder to reimburse the education standards and practices board or, in the case of a school administrator,

the administrator's professional practices board, for all or part of the costs of administrative actions that result in disciplinary action against the certificate holder under this section.

5. As used in this section:
 - a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt overturned on appeal.
 - b. "Crime against a child" means violation of sections 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-16-04, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-17-07.1, 12.1-17-10, 12.1-18-01, 12.1-18-02, 12.1-18-03, 12.1-29-01, 12.1-29-02, or 12.1-29-03, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance.

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

Approved April 14, 1999
Filed April 14, 1999

CHAPTER 174**HOUSE BILL NO. 1059**

(Representative Keiser)

**EDUCATION FACTFINDING COMMISSION
COMPENSATION**

AN ACT to amend and reenact section 15-38.1-04 of the North Dakota Century Code, relating to compensation for members of the education factfinding commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-38.1-04 of the North Dakota Century Code is amended and reenacted as follows:

15-38.1-04. Compensation of commission and factfinders. Members of the commission ~~shall~~ are entitled to receive fifty compensation at the rate of sixty-two dollars and fifty cents per day for their attendance at regular or special and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission or in the performance of such special duties as the commission may direct. In addition to such compensation, they shall receive an allowance for actual and necessary travel and subsistence expenses while performing commission functions away from their places of residence. Factfinders, appointed by the commission, including commission members when so serving, must be reimbursed as factfinders, are entitled to reimbursement for expense on the same basis expenses in the same manner as members of the commission and shall receive such to compensation as established by the commission shall from time to time establish.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 175

SENATE BILL NO. 2070

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADMINISTRATION

AN ACT to amend and reenact subsections 2 and 9 of section 15-39.1-04, subsections 1 and 4 of section 15-39.1-10, sections 15-39.1-11, 15-39.1-12, 15-39.1-16, subsection 2 of section 15-39.1-17, sections 15-39.1-20, and 15-39.1-24 of the North Dakota Century Code, relating to definitions, eligibility for benefits, vesting, early retirement, annuities, death of member, withdrawals, and purchase of additional credit under the teachers' fund for retirement; and to repeal section 15-39.1-12.1 of the North Dakota Century Code, relating to partial service retirements under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁹ **SECTION 1. AMENDMENT.** Subsections 2 and 9 of section 15-39.1-04 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. "Beneficiary" means the person designated in writing by the member ~~or, in the absence of such designation, the member's surviving spouse, if any~~ except that in the absence of such designation, if the member is married, the member's spouse must be the primary beneficiary. If the member is married, and if the member wishes to name an alternate beneficiary, the member's spouse must consent in writing to the member's designation. If the member dies without having named a contingent beneficiary to receive any remaining benefits due after the death of the beneficiary, the primary beneficiary may name a contingent beneficiary.
9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, administrative, and extracurricular services during a school year reported as salary on the member's federal income tax withholding statements plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" with respect to a member who begins participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2 after June 30, 1996, may not exceed the annual compensation limits established under 26 U.S.C. 401(a)(17)(B), as amended by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one hundred fifty thousand dollars, as adjusted by the commissioner of the internal revenue service for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B). "Salary" does not include fringe benefits such as payments for unused sick leave, personal

¹⁴⁹ Section 15-39.1-04 was also amended by section 32 of House Bill No. 1188, chapter 162.

leave, vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, referee pay, busdriver pay, janitorial pay, or salary received by a member in lieu of previously employer-provided fringe benefits ~~under an agreement between the member and participating employer entered into within sixty months before retirement.~~

¹⁵⁰ **SECTION 2. AMENDMENT.** Subsections 1 and 4 of section 15-39.1-10 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:
 - a. All members who have ~~completed five~~ earned three years of teaching credit and who have attained the age of sixty-five years.
 - b. All members who have ~~completed five~~ earned three years of teaching credit and who have a combined total of years of service credit and years of age which equals eighty-five.
4. Retirement benefits must begin no later than April first of the calendar year following the year the member attains age seventy and one-half or April first of the calendar year following the year the member terminates covered employment, whichever is later. Payments must be made over a period of time which does not exceed the life expectancy of the member or the joint life expectancy of the member and the beneficiary. Payment of minimum distributions must be made in accordance with section 401(a)(9) of the Internal Revenue Code, and the regulations issued under that section, as applicable to governmental plans.

SECTION 3. AMENDMENT. Section 15-39.1-11 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-11. Vesting of rights. When any member has paid assessments ~~for a period of five~~ and earned three years ~~for~~ of service in this state, that member has a vested right to a retirement annuity but is not entitled to payments under this chapter until the member meets the requirements set forth in section 15-39.1-10 or 15-39.1-12.

SECTION 4. AMENDMENT. Section 15-39.1-12 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-12. Early retirement. Any teacher who has acquired a vested right to a retirement annuity as set forth in section 15-39.1-11 and who has attained age fifty-five may retire prior to the normal retirement age as set forth herein but the benefits to which ~~he~~ the member is then entitled must be reduced to the actuarial equivalent of the benefit credits earned to the date of early retirement from the earlier of age sixty-five or the age at which current service plus age equals eighty-five.

¹⁵⁰ Section 15-39.1-10 was also amended by section 1 of Senate Bill No. 2069, chapter 177.

SECTION 5. AMENDMENT. Section 15-39.1-16 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-16. Option of teachers eligible to receive annuities. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option three. Upon the death of the teacher within five years of the commencement of annuity payments, the payments must be continued for the remainder of the five-year period to the person as the teacher has nominated by written designation filed with the board ~~at the time of retirement.~~

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, the payments must be continued for the remainder of the ten-year period to the person as the teacher has nominated by written designation filed with the board ~~at the time of retirement.~~

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

The amount of the reduced retirement allowance payable upon the exercise of any of these options must be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and the teacher's designated beneficiary. A member's spouse, if any, must consent in writing to the member's choice of benefit payment option for any benefit payments commencing after June 30, 1999. The board may rely on the member's representations about that person's marital status in determining the member's marital status. The spouse's written consent must be witnessed by a notary or a plan representative. If the spouse does not consent, or cannot be located, the member's annuity benefit must be paid using option two, the fifty percent joint and survivor option.

SECTION 6. AMENDMENT. Subsection 2 of section 15-39.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If the death of a member who has acquired a vested interest should occur prior to retirement, then the member's beneficiary may apply for a

refund of the member's assessments accumulated with interest. If there is no beneficiary, then the same must be paid to the surviving children, or if none, to the member's estate; provided, however, that if no probate proceedings have been instituted within thirty days of the death of the member, then to the heirs at law who file claim with the fund within one hundred fifty days of the death of the member. In lieu of a refund, the beneficiary may elect either to receive a monthly annuity in accordance with option one under section 15-39.1-16, with the amount of the annuity being determined as though the deceased member had retired under the option on the day benefits commence to the beneficiary; or the beneficiary may elect to receive for sixty months an amount equal to the monthly annuity the member would have received if the member had attained age sixty-five and retired, based on the member's credited service to date of death. If any ~~applicant for an annuity member~~ under this section has not paid into the fund assessments equal to the amounts required to be paid under section 15-39.1-09, the ~~member applicant~~ shall pay any deficiency into the fund before receiving the annuity.

SECTION 7. AMENDMENT. Section 15-39.1-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-20. Withdrawal from fund. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before ~~accumulating five years of service credit~~ becoming vested must be automatically refunded. The assessments plus interest earned, if not claimed by the member, must be returned in the fiscal year following the date of termination. The automatic refund must be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases. ~~For distributions made after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a member's refund election under this chapter, a~~ A member may elect, at the time and under rules ~~established~~ adopted by the board, to have any portion of an eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code.

SECTION 8. AMENDMENT. Section 15-39.1-24 of the 1997 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 who provides proof of eligibility under rules adopted by the board may purchase additional credit for use toward retirement in the following instances and manner:

1. Any A teacher may purchase service credit for years of elementary or secondary teaching service at an accredited out-of-state public, private, or parochial 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 A teacher not qualified to receive military credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] or Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88 Stat. 3150] who has received an honorable discharge from military service of the United States of America may receive purchase military 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 Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] 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 Uniformed Services Employment and 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 credited such periods while in attendance at that college, university, or school, 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. A teacher may purchase service credit for credit lost while on an approved leave of absence from teaching duties.
4. 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.

5. ~~A teacher may purchase credit for years of elementary or secondary teaching 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.~~
6. ~~An active~~ A teacher who is elected president of a professional educational organization recognized by the board and who serves in a full-time capacity in lieu of teaching may purchase service credit for the time spent serving as president. ~~The service credit must be purchased within one year after the teacher leaves the position.~~ As an alternative to purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement under which payment for service credit for the time spent as president of the professional educational organization 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 as president.
7. A teacher may purchase service credit for years of elementary or secondary teaching service in an accredited North Dakota private or parochial school.
8. A teacher who has at least five years of teaching service credit in the fund may purchase credit not based on service for use toward retirement eligibility and benefits. The purchase of service credit for such nonqualified service as defined under section 415(n) of the Internal Revenue Code is limited to an aggregate of five years.
9. A teacher who had that person's North Dakota teaching service interrupted by military service in any branch of the United States armed forces and received an honorable discharge may receive credit for military service pursuant to applicable federal veterans' rights acts including the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307] or the Veterans' Reemployment Rights Act of 1991 [Pub. L. 93-508; 88 Stat. 3150].
10. With the exception of military service, purchased service credit is not eligible for credit if the years claimed also qualify for retirement benefits from another retirement system.
11. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.
8. ~~12.~~ Except as provided in subsections 2, 4, and 6, the 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~~ Except as provided in subsections 4, 6, and 9, the purchase cost must be on an actuarial equivalent basis.

SECTION 9. REPEAL. Section 15-39.1-12.1 of the North Dakota Century Code is repealed.

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 176

SENATE BILL NO. 2204

(Senators Holmberg, Krebsbach, Robinson, W. Stenehjem, Wardner)

TFFR MEMBERSHIP

AN ACT to amend and reenact section 15-39.1-09 of the North Dakota Century Code, relating to membership in the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-39.1-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-09. Membership in fund and assessments - Employer payment of employee contribution.

1. Except as provided in subsection 2 of section 15-39.1-10.3 and subsection 3, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.
2. Each employer, at its option, may pay the teacher contributions required by subsection 1 for all compensation earned after June 30, 1983. The amount paid must be paid by the employer in lieu of contributions by the employee. If an employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining income tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the teacher in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these teacher contributions from the same source of funds used in paying compensation to the teachers. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. If teacher contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as teacher contributions made prior to the date the contributions were assumed by the employer. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

3. A person, except the superintendent of public instruction, who is certified to teach in this state by the education standards and practices board and who is first employed and entered upon the payroll of the superintendent of public instruction after January 6, 2001, may elect to become a participating member of the public employees retirement system. An election made by a person to participate in the public employees retirement system under this subsection is irrevocable.

Approved March 19, 1999

Filed March 19, 1999

CHAPTER 177

SENATE BILL NO. 2069

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR 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 subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to the computation of benefits under the teachers' fund for retirement; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 15-39.1-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is one and ~~seventy-five~~ eighty-eight 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.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustment. An individual who on June 30, 1999, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement.

SECTION 3. APPLICATION OF ACT. Section 1 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 1999, and applies to those benefits payable after June 30, 1999. Section 2 of this Act applies to benefits payable after June 30, 1999.

Approved March 15, 1999
Filed March 16, 1999

¹⁵¹ Section 15-39.1-10 was also amended by section 2 of Senate Bill No. 2070, chapter 175.

CHAPTER 178

SENATE BILL NO. 2282

(Senators C. Nelson, Wardner)
(Representatives Maragos, Stefonowicz)

TFFR PARTICIPATION

AN ACT to amend and reenact section 15-39.1-19.1 of the North Dakota Century Code, relating to participation in the teachers' fund for retirement by retired persons who have resumed teaching; 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 15-39.1-19.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. Annuities discontinued on resumption of teaching.

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not return to covered employment until sixty calendar days have elapsed from the member's retirement date. ~~A~~ Except as otherwise provided in this section, a retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations. Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office will result in the loss of one month's annuity benefit. ~~The~~ Except as otherwise provided in this section, the retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ninety-day maximum. ~~Any~~ A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ninety-day maximum. The employer shall pay the required contributions in a like manner.
2. A retired member may return to teaching for up to one year without losing any benefits provided at least fifty percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. Employee and employer assessments under this arrangement must be paid by the person's employer. Assessments must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation. A retired member reemployed under the provisions of this subsection must be treated as retired for all other purposes under this chapter. Notwithstanding subdivision a of subsection 3, a retired member may not earn any additional service during the period of reemployment. The member's benefits may not be adjusted to reflect changes in the member's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and

after the period of reemployment, additional benefits normally available to an active member, such as disability benefits, are not available to a retired member reemployed under this subsection, and refunds may not be made to a retired member at the end of that person's period of reemployment. For purposes of this subsection, a school district's educational foundation must be a nonprofit or charitable organization exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].

3. Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:
4.
 - a. If the teacher subsequently retires with less than two years of additional credited service, the teacher's assessments paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity the first day of the month following the teacher's re-retirement.
 2. b. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity is the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act becomes effective on August 1, 1999, or on the date the board of trustees of the teachers' fund for retirement receives a letter ruling from the internal revenue service that this Act does not jeopardize the qualified status of the teachers' fund for retirement, whichever date is later, and is effective for two years from that date. The board shall notify the legislative council of the effective date of this Act.

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 179

SENATE BILL NO. 2146

(Education Committee)

(At the request of the Office of Management and Budget)

SCHOOL AID PAYMENT

AN ACT to amend and reenact sections 15-40.1-05 and 15-44-03 of the North Dakota Century Code, relating to payment of state school aid by the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-05. Distribution of payments to school districts - Duty of ~~office of management and budget~~ superintendent of public instruction. The superintendent of public instruction shall ~~certify to the office of management and budget a list of all school districts in the state, together with a statement of~~ determine the total payments made to each respective school district during the previous fiscal year. The ~~office of management and budget superintendent~~ shall pay each school district ten percent of ~~the~~ that amount ~~certified~~, within the limits of legislative appropriation, on or before July fifteenth, August first, September first, and October first of each year. The superintendent of public instruction shall determine what amounts in addition to those payments are necessary to constitute the remainder of the payments due to each school district for the current school year; ~~and shall certify to the office of management and budget a list of all school districts in the state, together with a statement of the payments due them.~~ On or before November first, the ~~office of management and budget superintendent of public instruction~~ shall pay to each school district, within limits of legislative appropriation, the amounts needed in addition to the above payments to constitute fifty percent of the sum found to be due under this chapter. On or before the first day of December, January, February, March, and April, payments equal to one-fifth of the total remaining payments must be made to each respective school district. If funds appropriated for distribution to school districts for per student and transportation aid become available after April first, the superintendent shall distribute the payments no later than June thirtieth.

SECTION 2. AMENDMENT. Section 15-44-03 of the North Dakota Century Code is amended and reenacted as follows:

15-44-03. Certificate by office of management and budget - Apportionment by superintendent of public instruction - Warrant - Payment. The office of management and budget on or before the third Monday in February, April, August, October, and December in each year, shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion such fund among the several school districts of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law, and shall ~~certify to the office of management and budget and state treasurer pay~~ the amount apportioned to the respective school districts. ~~Immediately upon receipt of the apportionment from the superintendent of public instruction, the office of management and budget shall pay each school district the amount to which it is entitled~~ Payments from the state tuition fund ~~and such payments must be~~

combined with and paid at the same time as ~~per-pupil~~ per student payments pursuant to section 15-40.1-05.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 180

SENATE BILL NO. 2381

(Senators Flakoll, C. Nelson)
(Representatives Clark, Hawken, B. Thoreson)

LIMITED ENGLISH PROFICIENCY STUDENT PAYMENTS

AN ACT to amend and reenact section 15-40.1-07.7 of the North Dakota Century Code, relating to per student payments for limited English proficient students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-07.7 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.7. Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive ~~three~~ four hundred dollars for each student who has been assessed by the student's school district and determined to have negligible or very limited English language skills as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
2. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before October ~~first~~ twenty-fifth of each school year. The superintendent shall distribute the payments no later than May thirtieth of each school year. The superintendent shall prorate payments under this section for any students registering in the school district after October first or departing the school district prior to the completion of the school year.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 181**SENATE BILL NO. 2257**

(Senators Naaden, Freborg)

SPECIAL EDUCATION PAYMENT DISTRIBUTION

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to the distribution of per student special education payments after closure of a school district; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

School district closure - Distribution of per student special education payments.

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of per student special education payments to which the former school district would have been entitled under section 15-40.1-07.6 for the provision of special education services during its final year of operation and shall pay a percentage of the total amount to each North Dakota school district that enrolls students who attended the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.
2. The superintendent of public instruction shall make payments under this section in the manner and at the time provided for other state payments in section 15-40.1-05.
3. The total special education payments to which a school district that ceased to exist between the completion of the 1996-97 school year and the commencement of the 1997-98 school year is entitled must be distributed as provided in subsection 1 on or before June 30, 1999.

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

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 182

HOUSE BILL NO. 1490

(Representatives D. Johnson, Delmore, Monson, Nowatzki)
(Senators Tomac, Wanzek)

WEATHER- OR EMERGENCY-RELATED SCHOOL CLOSURES

AN ACT to create and enact a new section to chapter 15-40.1 of the North Dakota Century Code, relating to the closure of schools in weather emergencies; to amend and reenact section 15-47-33 of the North Dakota Century Code, or in the alternative to amend and reenact section 15.1-06-04 of the North Dakota Century Code, relating to length of the school year; and to repeal section 15-40.1-09.1 of the North Dakota Century Code, relating to the closure of schools due to emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Weather or other emergency conditions - Closure of schools - Foundation aid.

If because of severe weather or other emergency conditions a school or school district remains closed or provides less than a full day of instruction, the school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy-three full days of instruction. Any school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of foundation aid, the governor waive the rescheduling in whole or in part. The governor may not grant a waiver for less than a full day of instruction.

SECTION 2. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-47-33 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-33. Length of elementary and secondary school year term.

1. All elementary and secondary schools in this state shall provide for a school term of at least one hundred eighty days apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subsections 2 through 10 of section 15-38-04.1 selected by the school board in consultation with district teachers;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and
 - d. Up to two full days during which parent-teacher conferences are held, or which are deemed by the school board to be compensatory

time for parent-teacher conferences held outside normal school hours.

2. A full day of instruction:
 - a. Consists of at least five and one-half hours ~~of instruction time~~ for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
 - b. Consists of at least six hours ~~of instruction time~~ for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
3. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
4. A school that does not qualify under the provisions of subsection 3 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.

¹⁵² **SECTION 3. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-06-04. School calendar - Length.

1. During each school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and
 - d. Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours.

¹⁵² Section 15.1-06-04 was created by section 6 of House Bill No. 1034, chapter 196, and amended by section 2 of Senate Bill No. 2344, chapter 187.

2. A full day of instruction consists of:
 - a. At least five and one-half hours of instruction time for elementary students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction; and
 - b. At least six hours of instruction time for high school students, during which time the students are required to be in attendance for the purpose of receiving curricular instruction.
3. If a school's calendar provides for an extension of each schoolday beyond the statutorily required minimum number of hours, and if the extensions when aggregated over an entire school year amount to more than eighty-four hours of additional classroom instruction during the school year, the school is exempt from having to make up six hours of instruction time lost as a result of weather-related closure. In order to make up lost classroom instruction time beyond the six hours, the school must extend its normal school calendar day by at least thirty minutes.
4. A school that does not qualify under the provisions of subsection 3 must extend its normal schoolday by at least thirty minutes to make up classroom instruction time lost as a result of weather-related closure.

SECTION 4. REPEAL. Section 15-40.1-09.1 of the North Dakota Century Code is repealed.

Approved April 19, 1999

Filed April 19, 1999

CHAPTER 183

SENATE BILL NO. 2202

(Senators Bowman, Christmann, Lyson, Wardner)
(Representative Drovdal)

FEDERAL MINERAL ROYALTY DISTRIBUTION

AN ACT to amend and reenact section 15-40.1-13 of the North Dakota Century Code, relating to distribution of mineral royalties to counties and school districts; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-13 of the North Dakota Century Code is amended and reenacted as follows:

15-40.1-13. Receipts from federal funds - Distribution to counties and school districts. All moneys paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" [Pub. L. 66-146; 41 Stat. 437; 30 U.S.C. 181 et seq.], must be credited to the state general fund and must be distributed only pursuant to ~~the terms of this chapter section.~~ Such

Three months following the calendar quarters ending in March, June, September, and December, the state auditor shall certify to the state treasurer the amount of money the state received during the preceding calendar quarter for royalties under the Act of Congress cited above. The state treasurer shall allocate the percentage of the total moneys received as required by this section among the counties in which the minerals were produced based on the proportion each county's mineral royalty revenue bears to the total mineral royalty revenue received by the state for that calendar quarter. The state treasurer shall pay the amount calculated to each county. The moneys must be used by the counties for planning, construction, and maintenance of public facilities, and the provision of public services.

The percentage of mineral royalty revenues received by the state under the Act of Congress cited above which is to be allocated and paid to the counties under this section is ten percent for collections in 2000, twenty percent for collections in 2001, thirty percent for collections in 2002, forty percent for collections in 2003, and fifty percent for collections in 2004 and thereafter. The funds needed to make the distribution to counties provided for in this section are hereby appropriated on a continuing basis for making these payments.

The balance of all revenue received under the Act of Congress cited above must be distributed only to school districts under this chapter and such moneys must be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes.

SECTION 2. EFFECTIVE DATE. This Act is effective for all revenues received under the Act of Congress cited in section 1 of this Act after December 31, 1999.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 184**SENATE BILL NO. 2142**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

TEACHING MINOR EQUIVALENCY

AN ACT to amend and reenact section 15-41-25 of the North Dakota Century Code, relating to teaching high school courses under previously granted minor equivalency authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1. AMENDMENT.** Section 15-41-25 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-25. High schools - Teacher qualification. Except as provided in section 15-29-08.4, every teacher in any high school in this state teaching any of the course areas or fields mentioned in section 15-41-24 ~~shall~~ must have a valid teacher's certificate and ~~shall~~ must have a major or minor in the course areas or fields that the teacher is teaching if the high school is to receive any approval by the department of public instruction. However, a teacher granted a certificate to teach in the disciplines of trade, industrial, technical, ~~and~~ or health under chapter 15-20.1 and possessing neither a major nor a minor in the field in which the teacher is employed ~~may~~ does not affect the approval of the employing school district. Any minor equivalency previously granted by the superintendent of public instruction remains valid.

Approved March 15, 1999
Filed March 15, 1999

¹⁵³ Section 15-41-25 was also amended by section 36 of House Bill No. 1188, chapter 162.

CHAPTER 185

SENATE BILL NO. 2335

(Senators Lee, Freborg, C. Nelson)
(Representatives Koppang, L. Thoreson)

POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

AN ACT to amend and reenact section 15-41.1-01 of the North Dakota Century Code, relating to the postsecondary enrollment options program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-41.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41.1-01. Postsecondary enrollment options program. Any North Dakota student enrolled in grade eleven or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of ~~an~~ a postsecondary level academic course offered by any postsecondary institution accredited by a regional accrediting organization or a postsecondary level vocational course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education, provided the course is taught by a faculty member of the postsecondary institution.

Approved March 22, 1999

Filed March 23, 1999

CHAPTER 186**SENATE BILL NO. 2066**
(Senator Freborg)**SCHOOL DISTRICT MOTOR VEHICLE BID
REQUIREMENTS**

AN ACT to amend and reenact section 15-47-15 of the North Dakota Century Code, or in the alternative to amend and reenact section 15.1-09-34 of the North Dakota Century Code, relating to school district bid requirements for used motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-47-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty.

1. 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~~ twenty-five thousand dollars 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 ~~contracts for~~:
 1. ~~Personal~~ Contracts for the personal services of employees of the district.
 2. ~~School text~~ Contracts for the purchase of school textbooks or reference books.
 3. ~~Articles~~ The purchase of articles not sold on the open market.
 4. ~~Patented~~ The purchase of patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 5. ~~Patented~~ The purchase of patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 6. Building contracts under chapters 48-01.1 and 48-02.
 7. School transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.

8. h. The purchase of heating fuel which is made by direct negotiation with a contractor using the procedure described in section 15-34.2-07.1.

Such exceptions must be strictly construed:

- i. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. Any member of a school board who participates in a violation of this section is guilty of a class B misdemeanor.

¹⁵⁴ **SECTION 2. AMENDMENT.** Section 15.1-09-34 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than ~~eight~~ twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
- a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building ~~contracts~~ construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services.
 - h. Vehicle fuel.

¹⁵⁴ Section 15.1-09-34 was created by section 9 of House Bill No. 1034, chapter 196.

- i. Heating fuel.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
 3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 187

SENATE BILL NO. 2344

(Senator Freborg)

SCHOOL YEAR LENGTH

AN ACT to amend and reenact section 15-47-33 of the North Dakota Century Code, or in the alternative to amend and reenact section 15.1-06-04 of the North Dakota Century Code, relating to length of the school year.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-47-33 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-33. Length of elementary and secondary school year term.

1. All elementary and secondary schools in this state shall provide for a school term of at least one hundred eighty days apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subsections 2 through 10 of section 15-38-04.1 selected by the school board in consultation with district teachers;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and
 - d. Up to two full days during which parent-teacher conferences are held, or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside normal school hours.
2. A full day of instruction:
 - a. Consists of at least five and one-half hours of instruction time for elementary students; and
 - b. Consists of at least six hours of instruction time for high school students.
3. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.

¹⁵⁵ **SECTION 2. AMENDMENT.** Section 15.1-06-04 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-06-04. School calendar - Length.

1. During each school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and
 - d. Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours.
2. A full day of instruction consists of:
 - a. At least five and one-half hours of instruction time for elementary students; and
 - b. At least six hours of instruction time for high school students.
3. If because of weather a school must dismiss before completing a full day of instruction, the school is responsible for making up only those hours and portions of an hour between the time of early dismissal and the conclusion of a full day of classroom instruction.

Approved April 19, 1999
Filed April 19, 1999

¹⁵⁵ Section 15.1-06-04 was created by section 6 of House Bill No. 1034, chapter 196, and amended by section 3 of House Bill No. 1490, chapter 182.

CHAPTER 188

HOUSE BILL NO. 1224

(Representatives Delmore, Drovdal, Hanson, Hawken)
(Senators Cook, Kelsh)

TEACHER SUSPENSIONS

AN ACT to amend and reenact subsection 4 of section 15-47-38 of the North Dakota Century Code, relating to teacher suspensions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 15-47-38 of the North Dakota Century Code is amended and reenacted as follows:

4. The school board by unanimous vote may suspend the teacher from regular duty if such action is deemed desirable during the process of determining if cause for dismissal exists. A school board shall address the matter of a teacher's suspension in an executive session, unless both the teacher and the school board agree that the matter may be addressed in the presence of other persons or at an open meeting. If, upon final decision, the teacher is dismissed, the board may in its discretion determine the teacher's salary or compensation as of the date of suspension. If the final decision is favorable to the teacher, there shall be no abatement of salary or compensation.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 189

HOUSE BILL NO. 1349

(Representatives Hawken, Maragos)
(Senators T. Mathern, Watne)

SCHOOL SAFETY PATROLS

AN ACT to amend and reenact section 15-47-44.1 of the North Dakota Century Code, or in the alternative to amend and reenact section 15.1-19-11 of the North Dakota Century Code, relating to school safety patrols.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1034 does not become effective, section 15-47-44.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-47-44.1. School safety patrols - Establishment - Adoption of standards.

The board of a public school district or the governing body of a nonpublic school may authorize school principals or administrators to establish safety patrols at schools under their control and to appoint students to the safety patrols. Any student ~~age eleven or older~~ enrolled in grade five or higher is eligible for appointment to a safety patrol, provided the student's parent or legal guardian has filed written permission with the school principal or administrator. The superintendent of public instruction shall adopt standards to guide safety patrol members in the conduct of their duties and shall specify the identification to be worn and the signals to be used by safety patrol members while on duty.

¹⁵⁶ **SECTION 2. AMENDMENT.** Section 15.1-19-11 of the North Dakota Century Code as created by House Bill No. 1034, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

15.1-19-11. School safety patrols - Establishment - Adoption of rules. The board of a school district or the governing body of a nonpublic school may authorize a school principal or administrator to establish a safety patrol and to appoint students to the safety patrol. Any student ~~age eleven or older~~ enrolled in grade five or higher is eligible for appointment to a safety patrol, provided the student's parent has filed written permission with the school principal or administrator. The superintendent of public instruction shall adopt rules to guide safety patrol members in the conduct of their duties and shall specify the identification to be worn and the signals to be used by safety patrol members while on duty.

Approved March 19, 1999
Filed March 22, 1999

¹⁵⁶ Section 15.1-19-11 was created by section 13 of House Bill No. 1034, chapter 196.

CHAPTER 190**SENATE BILL NO. 2410**

(Senator Holmberg)

EARLY CHILDHOOD TEACHING CERTIFICATES

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to an early childhood education teaching certificate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Early childhood education teaching certificate. The education standards and practices board shall develop and implement an optional early childhood education teaching certificate. The optional early childhood education teaching certificate may be used in nonparental settings such as early childhood programs, preschool programs, and head start programs.

Approved April 17, 1999

Filed April 19, 1999

CHAPTER 191**HOUSE BILL NO. 1233**

(Representative R. Kelsch)

**SCHOOL FOOD SERVICE PERSONNEL TRAINING AND
CERTIFICATES**

AN ACT to create and enact a new section to chapter 15-54 of the North Dakota Century Code, relating to training for food service personnel; and to repeal section 15-54-08 of the North Dakota Century Code, relating to health certificates for school food service personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-54 of the North Dakota Century Code is created and enacted as follows:

Food service personnel - Training. Each individual who manages the food service operation of a public or nonprofit private agency, school, institution, organization, corporation, limited liability company, firm, foundation, or entity, with which the superintendent of public instruction has entered into an agreement under section 15-54-03, shall undergo initial and continuing training regarding the safe handling, preparation, and service of food. The superintendent of public instruction shall by rule prescribe the nature, scope, and frequency of the training.

SECTION 2. REPEAL. Section 15-54-08 of the North Dakota Century Code is repealed.

Approved March 19, 1999

Filed March 22, 1999

CHAPTER 192

SENATE BILL NO. 2154

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SPECIAL EDUCATION FUNDS AND POLICIES

AN ACT to create and enact a new subsection to section 15-40.1-07.6 of the North Dakota Century Code, relating to authority of the superintendent of public instruction to withhold state special education funds; and to amend and reenact section 15-59-02.1 of the North Dakota Century Code, relating to special education policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-59-02.1 of the 1997 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 federal government, state, school districts, and parents of students with disabilities in the provision of special education and related services. State special education policies are directed to achieving the purposes set out in the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.]. State funding along with federal resources are matched with local funds to achieve these purposes. "Related services" means transportation and such developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the student'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 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 that are provided for by limited state funds, the superintendent of public instruction will be required to approve a contract for services based on an individualized education program developed for each student with disabilities placed in a private school program or in programs outside the student's original special education unit.~~

The legislative assembly recognizes that a 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 disability. ~~All summer programs attended by these students must have approval of the superintendent of public instruction before receiving foundation aid or state special education reimbursement.~~

In the case of 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 students with disabilities have the right to a free appropriate public education" means that all students with disabilities have the right to special education and related services which must be provided at public expense, under public supervision and direction and at no cost to parents. "At no cost" means specifically designed instruction and related services as described in the student's individualized education program plan provided without charge but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

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 student or the student's parent, for determining a student's medically related disability or other required related services which results in the student'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 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 superintendent 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 a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a student 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 children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the superintendent of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

SECTION 2. A new subsection to section 15-40.1-07.6 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The superintendent of public instruction may enforce the department's determination of a complaint by withholding state special education funds due a school district that is found to be in violation of providing a free appropriate public education in an amount equal to the cost of meeting the affected individual students' needs.

Approved April 13, 1999

Filed April 14, 1999

CHAPTER 193**SENATE BILL NO. 2041**
(Legislative Council)
(Education Finance Committee)**SCHOOL CONSTRUCTION LOANS**

AN ACT to amend and reenact subsection 1 of section 15-60-10 of the North Dakota Century Code, relating to school construction loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-60-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board may authorize the use of 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 for the purpose of funding loans described in this chapter. The outstanding principal balance of loans funded under this chapter may not exceed ~~twenty-five~~ forty million dollars. The board may adopt policies and rules for funding school construction loans.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 194

SENATE BILL NO. 2139

(Education Committee)

(At the request of the Bank of North Dakota)

STATE GUARANTEE LOAN PROGRAM

AN ACT to amend and reenact section 15-62.1-02 of the North Dakota Century Code, relating to the powers and duties of the Bank of North Dakota in its administration of the state guarantee loan programs; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-02. Powers and duties of the agency. The agency has the following powers and duties under this chapter:

1. To guarantee all loans which satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, ~~1996~~ 1998, upon terms, conditions, and application procedures commensurate with the federal Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581], as amended through December 31, ~~1996~~ 1998, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. ~~If loans are guaranteed without federal coinsurance, the agency may not adopt eligibility requirements or loan limits for student loans to qualify for guarantee by the agency which are more restrictive than those eligibility requirements or loan limits existent as of the date the industrial commission approves the guarantee of loans without federal coinsurance or the date of the termination of programs providing for federal coinsurance of loans guaranteed by the agency.~~ Students whose loans are guaranteed by the agency must be students who have been accepted for enrollment or are attending eligible postsecondary institutions located within or without this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education on at least a half-time basis, as determined by the institutions, are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish

minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.

2. To take, hold, expend, and administer, on behalf of the state from any source any real property, personal property and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the agency may be a general obligation of the state of North Dakota, nor may be payable out of any moneys except those made available to the agency under this chapter. Nothing in this chapter may be construed to authorize the agency to borrow funds for any use relating to the administration of the state guarantee loan programs.

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

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 195

SENATE BILL NO. 2138

(Education Committee)

(At the request of the Bank of North Dakota)

LOAN GUARANTEE RESERVE FUNDS

AN ACT to amend and reenact section 15-62.1-05 of the North Dakota Century Code, relating to adequate federal loan guarantee reserve funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-05. Establishment and maintenance of adequate guarantee funds - Appropriation. The agency may enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program. The agency shall establish and at all times maintain from funds appropriated under this chapter adequate guarantee reserve funds in special accounts in the Bank of North Dakota unless required by title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581 20 U.S.C. 1001 et seq.], as amended through December 31, 1998, to be invested elsewhere. The fund for loans which are coinsured by the federal government must be maintained at a minimum amount equal to ~~two percent of the unpaid principal amount of the loans~~ the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; Pub. L. 105-244; 112 Stat. 1581 20 U.S.C. 1001 et seq.], as amended through December 31, 1998. The fund for loans which are not coinsured by the federal government may not be less than one-tenth of the dollar value of the ~~total portion~~ unpaid principal balance of such the loans. Funds appropriated under this chapter and designated as guarantee agency reserve funds for loans that are not coinsured by the federal government must be administered separately and segregated from reserve funds for loans that are coinsured by the federal government. ~~The agency is authorized to enter into an agreement with the federal government for the coinsurance of loans guaranteed under this program.~~ The securities in which the moneys in the reserve funds may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the respective guarantee loan programs and income in excess of that required to pay the cost of administering the programs must be deposited in the respective reserve fund that corresponds to the source of the initial invested funds. The proceeds of ~~such~~ reserve funds received from federal, state, or private sources for the purpose of guaranteeing loans made to students as provided in this chapter are hereby appropriated as a continuing appropriation for the payment of defaulted loans guaranteed by each respective fund.

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

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 196

HOUSE BILL NO. 1034

(Legislative Council)
(Education Services Committee)

EDUCATION TITLE REVISION

AN ACT to create and enact title 15.1 of the North Dakota Century Code, relating to elementary and secondary education; to repeal chapter 15-21, sections 15-21.1-01, 15-21.1-02, 15-21.1-03, 15-21.1-04, 15-21.1-05, 15-21.1-06, 15-21.1-07, 15-21.1-09, chapters 15-21.2, 15-22, 15-27.1, 15-27.2, 15-27.3, 15-27.4, 15-27.5, 15-27.6, 15-27.7, 15-28, sections 15-29-01, 15-29-01.1, 15-29-02, 15-29-03, 15-29-03.1, 15-29-04, 15-29-05, 15-29-06, 15-29-07, 15-29-08, 15-29-08.4, 15-29-09, 15-29-10, 15-29-11, 15-29-13, 15-29-14, 15-34.2-12, 15-34.2-13, 15-34.2-14, 15-34.2-17, 15-34.2-18, 15-35-01.2, 15-35-09, 15-35-11, 15-35-12, 15-35-14, 15-38-04.1, 15-38-06, 15-38-13, 15-38-13.1, 15-38-13.2, 15-41-01, 15-41-02, 15-41-03, 15-41-04, 15-41-05, 15-41-07, 15-41-08, 15-41-27, chapter 15-41.1, sections 15-43-11.1, 15-43-11.2, 15-43-11.3, 15-43-11.4, 15-44-06, 15-44-09, 15-44-10, 15-44-11, chapter 15-46, sections 15-47-01, 15-47-01.1, 15-47-02.1, 15-47-04, 15-47-05, 15-47-06, 15-47-07, 15-47-08, 15-47-09, 15-47-10, 15-47-11, 15-47-12, 15-47-13, 15-47-14, 15-47-15, 15-47-16, 15-47-21, 15-47-22, 15-47-24, 15-47-25, 15-47-29, 15-47-30, 15-47-30.1, 15-47-31, 15-47-32, 15-47-33, 15-47-33.1, 15-47-36, 15-47-37, 15-47-39, 15-47-40, 15-47-40.1, 15-47-41, 15-47-43, 15-47-44.1, 15-47-44.2, 15-47-47, 15-47-48, 15-47-49, 15-47-50, 15-47-51, chapters 15-48, 15-49, 15-51, 15-64, and 15-65 of the North Dakota Century Code, relating to elementary and secondary education provisions addressed in the creation of North Dakota Century Code title 15.1; to provide penalties; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁷ **SECTION 1.** Chapter 15.1-01 of the North Dakota Century Code is created and enacted as follows:

15.1-01-01. State board of public school education - Composition.

1. The state board of public school education consists of the superintendent of public instruction and:
 - a. An individual representing Barnes, Cass, Grand Forks, Griggs, Nelson, Steele, and Traill counties;
 - b. An individual representing Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh counties;

¹⁵⁷ Section 15.1-01-02 was amended by section 47 of House Bill No. 1188, chapter 162.

- c. An individual representing Dickey, Emmons, LaMoure, Logan, McIntosh, Ransom, Richland, and Sargent counties;
 - d. An individual representing Burleigh, Eddy, Foster, Kidder, McLean, Sheridan, Stutsman, and Wells counties;
 - e. An individual representing Burke, Divide, McKenzie, Mountrail, Ward, and Williams counties; and
 - f. An individual representing Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark counties.
2. All board members other than the superintendent of public instruction must be qualified electors and must reside in one of the counties they represent.
 3. The governor shall appoint new board members from a list of three names submitted by a committee consisting of the president of the North Dakota education association, the president of the North Dakota council of educational leaders, and the president of the North Dakota school boards association. Two of the state board members must be members of the North Dakota school boards association. Appointees serve for six-year terms, staggered so that the terms of two members expire on June thirtieth of each even-numbered year. If a vacancy occurs, the governor shall appoint an individual to serve for the duration of the unexpired term.
 4. Board members are entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses, from the biennial appropriation for the superintendent of public instruction, as provided by law for state officers, if they are attending board meetings or performing duties directed by the board. No compensation may be paid under this section to any member who receives compensation or a salary as a state employee or official.
 5. The superintendent of public instruction shall serve as the executive director and secretary of the board. The superintendent shall call meetings as necessary, carry out the policies of the board, and employ personnel necessary to perform the board's duties. The board shall annually elect one member to serve as the chairman.

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

1. Coordinating elementary and secondary education programs, vocational and technical education programs, and higher education programs.
2. Cooperating in the provision of professional growth and development opportunities for elementary and secondary teachers and administrators.

3. Ensuring cooperation in any other jointly beneficial project or program.

15.1-01-03. State board of public school education - Powers and duties. The state board of public school education shall:

1. Assist county committees in carrying out their duties.
2. Provide county committees with clerical assistance, plans of procedure, standards, data, maps, forms, and other materials, information, and services.
3. Appoint members to the county committee, if the county superintendent does not fulfill this duty, as provided for in section 15.1-10-01.
4. Adopt rules regarding school district reorganizations, annexations, and dissolutions.

¹⁵⁸ **SECTION 2.** Chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

15.1-02-01. Superintendent of public instruction - Qualifications. The qualified electors of this state shall elect a superintendent of public instruction at the appropriate general election. The superintendent must be at least twenty-five years of age on the day of the election, have the qualifications of an elector for that office, and hold a valid North Dakota teaching certificate on the day of the election and at all times during the superintendent's term of office.

15.1-02-02. Salary and traveling expenses. The superintendent of public instruction is entitled to receive an annual salary of fifty-eight thousand two hundred seventy-two dollars and is entitled to reimbursement for actual and necessary expenses incurred in the same manner as other state officials.

15.1-02-03. Appointment of deputy - Employment of personnel. The superintendent of public instruction may appoint a deputy superintendent and an assistant. The superintendent may also hire personnel or contract with other persons to perform the work of the department of public instruction.

15.1-02-04. Superintendent of public instruction - Duties. The superintendent of public instruction:

1. Shall supervise the provision of elementary and secondary education to the students of this state.
2. Shall supervise the establishment and maintenance of schools and provide advice and counsel regarding the welfare of the schools.
3. Shall supervise the development of course content standards.
4. Shall supervise the assessment of students.

¹⁵⁸ Section 15.1-02-03 was amended by section 28 of Senate Bill No. 2013, chapter 35.

5. Shall serve as an ex officio member of the board of university and school lands.
6. Shall keep a complete record of all official acts and appeals.
7. As appropriate, shall determine the outcome of appeals regarding education matters.
8. Shall direct school district annexation, reorganization, and dissolution and employ and compensate personnel necessary to enable the state board of public school education to carry out its powers and duties regarding school district annexation, reorganization, and dissolution.

15.1-02-05. Federal government - Contracts. The superintendent of public instruction may contract with an agency of the federal government:

1. For and on behalf of the department of public instruction.
2. For and on behalf of a school district, with the consent of the school district board.

15.1-02-06. Preservation of property. The superintendent of public instruction shall provide for the preservation of all property that the superintendent acquires in an official capacity and which has educational interest and value or which records official acts by the superintendent. At the conclusion of the superintendent's term of office, the superintendent shall deliver the property to the superintendent's successor.

15.1-02-07. Superintendent of public instruction - Lease of unused real property.

1. The superintendent of public instruction may lease surplus portions of real property, including buildings and improvements, owned by the state and administered by the superintendent of public instruction at the school for the blind, the school for the deaf, and the division of independent study.
2. The superintendent may lease the unused portion of a building only after consultation with and adherence to conditions set by the administrator of the state fire and tornado fund.
3. A lease agreement under this section may not exceed five years.
4. A lease agreement under this section must provide that:
 - a. It is cancelable by the state without liability at the end of any state fiscal biennium; or
 - b. It is renewable at the sole discretion of the superintendent of public instruction at the beginning of each fiscal biennium.
5. The superintendent may set additional terms and conditions for leases under this section.
6. The attorney general shall review any lease under this section and approve its legal adequacy before its execution.

7. The superintendent may expend revenues from leases under this section only with legislative approval.

15.1-02-08. Accounting and reporting system - Uniformity. The superintendent of public instruction shall implement a uniform system for the accounting, budgeting, and reporting of data for all school districts in the state. The superintendent of public instruction shall designate the software standards to be used by school districts in their accounting, budgeting, and reporting functions.

15.1-02-09. Biennial report - Contents. The superintendent of public instruction shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The superintendent shall include in the report:

1. The number of school districts in the state.
2. The financial condition of each school district, including its receipts and expenditures.
3. The value of all property owned or controlled by each school district.
4. The cost of education in each school district.
5. The number of teachers employed by each school district and their salaries.
6. The number of students in average daily membership and average daily attendance in each school district, the grades in which they are enrolled, and where applicable the courses in which they are enrolled.
7. Information regarding the state's approved nonpublic schools.

15.1-02-10. Biennial report - Distribution. The superintendent of public instruction shall make the biennial report available to each member of the legislative assembly upon request. The superintendent shall provide a copy of the report to each state officer and to the legislative council. The superintendent shall provide eight copies of the report to the state library.

15.1-02-11. Superintendent of public instruction - Accreditation of schools - Rules. The superintendent of public instruction may adopt rules governing the accreditation of public and nonpublic schools.

15.1-02-12. Expiration of existing rules. Any rule adopted by the superintendent of public instruction in a manner other than that set forth in chapter 28-32 is ineffective after October 31, 1999. For purposes of this section, "rule" includes any regulation, standard, guideline, statement, or policy that has the effect of law or which has either direct or indirect financial consequences for noncompliance.

SECTION 3. Chapter 15.1-03 of the North Dakota Century Code is created and enacted as follows:

15.1-03-01. Department of public instruction - Establishment. There is established a department of public instruction. The superintendent of public instruction is the chief administrative officer of the department of public instruction.

15.1-03-02. Revolving school district equipment and software fund - Continuing appropriation. There is established in the department of public instruction a revolving school district equipment and software fund for the cooperative purchase by school districts of equipment and software. The superintendent shall place a service charge on any purchases to cover costs incurred in compiling purchase orders, preparing invoices, recording payments from school districts, and shipping the purchased goods. Clerical and related costs associated with the operation of the revolving fund must be paid from the fund. The superintendent shall use any moneys remaining in the fund at the end of a fiscal year to support conferences regarding computers and related technology. Moneys received by the fund are appropriated for the purposes provided in this section.

15.1-03-03. Revolving printing fund - Instructional materials - Continuing appropriation. A school district may purchase at cost instructional materials developed and printed by the superintendent of public instruction. The superintendent shall deposit all moneys collected from schools as payment for the instructional materials into a special fund in the state treasury known as the revolving printing fund. All moneys deposited into the revolving printing fund are hereby appropriated to the superintendent on a continuing basis for the development and printing of instructional materials. If on July first of any year the balance in the revolving printing fund exceeds fifty thousand dollars, the state treasurer shall transfer the amount in excess of fifty thousand dollars to the state general fund.

SECTION 4. Chapter 15.1-04 of the North Dakota Century Code is created and enacted as follows:

15.1-04-01. Compact for education. The compact for education is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

COMPACT FOR EDUCATION

Article I - Purpose and Policy

- A. It is the purpose of this compact to:
1. Establish and maintain close cooperation and understanding among executive, legislative, professional, educational, and lay leadership on a nationwide basis at the state and local levels.
 2. Provide a forum for the discussion, development, crystalization, and recommendation of public policy alternatives in the field of education.
 3. Provide a clearinghouse for information on matters relating to education problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
 4. Facilitate the improvement of state and local education systems so that all of them will be able to meet adequate and desirable goals in

a society that requires continuous qualitative and quantitative advances in educational opportunities, methods, and facilities.

- B. It is the policy of this compact to encourage and promote local and state initiatives in the development, maintenance, improvement, and administration of education systems and institutions in a manner that will accord with the needs and advantages of diversity among localities and states.
- C. The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own education system and institutions, because of the highly mobile character of individuals within the nation, and because the products and services contributing to the health, welfare, and economic advancement of each state are supplied in significant part by persons educated in other states.

Article II - State Defined

As used in this compact, "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III - The Commission

- A. The education commission of the states, hereinafter called "the commission", is hereby established. The commission consists of seven members representing each party state. One of the members must be the governor and two must be members of the state legislative assembly selected by its respective houses. The governor shall appoint the remaining four members, all of whom serve at the pleasure of the governor. If the laws of a state prevent legislators from serving on the commission, the governor shall appoint six members, all of whom shall serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements that a state may establish for the appointment and service of its members on the commission, the guiding principle for the composition of the membership on the commission from each party state is that the members representing the state must, by virtue of their training, experience, knowledge, or affiliations, be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, and lay and professional, as well as public and nonpublic educational leadership. Of those appointees, one must be the head of a state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may not be more than ten nonvoting commissioners selected by the steering committee for terms of one year. The nonvoting commissioners shall represent leading national organizations of professional educators or individuals concerned with educational administration.
- B. The members of the commission are entitled to one vote each on the commission. No action of the commission is binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor of the action. Action of the commission may be only at a meeting at which a majority of the commissioners are

present. The commission shall meet at least once a year. In its bylaws, and subject to any directions and limitations contained in the bylaws, the commission may delegate the exercise of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV, and the adoption of the annual report pursuant to this article.

- C. The commission shall have a seal.
- D. The commission shall elect annually, from among its members, a chairman, who must be a governor, a vice chairman, and a treasurer. The commission shall provide for the appointment of an executive director. The executive director shall serve at the pleasure of the commission and, together with the treasurer and other personnel deemed appropriate by the commission, shall be bonded in an amount determined by the commission. The executive director shall be secretary.
- E. Notwithstanding the civil service, personnel, or other merit system laws of a party state, the executive director, subject to the approval of the steering committee, shall appoint, remove, or discharge personnel as necessary for the performance of the functions of the commission, and shall fix the duties and compensation of the personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.
- F. The commission may borrow, accept, or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.
- G. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission or services borrowed pursuant to this article must be reported in the annual report of the commission. The report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.
- H. The commission may establish and maintain facilities for transacting its business. The commission may acquire, hold, and convey real and personal property and any interest therein.
- I. The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind the bylaws. The commission shall publish its bylaws in convenient form and shall file a copy of the bylaws and any amendment to the bylaws, with the appropriate agency or officer in each of the party states.
- J. The commission annually shall make to the governor and legislative assembly of each party state a report covering the activities of the

commission for the preceding year. The commission may make additional reports, as it deems desirable.

Article IV - Powers

In addition to authority conferred on the commission by other provisions of the compact, the commission has the authority to:

- A. Collect, correlate, analyze, and interpret information and data concerning educational needs and resources.
- B. Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public education systems.
- C. Develop proposals for adequate financing of education as a whole and at each of its many levels.
- D. Conduct or participate in research if the commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
- E. Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment of public education, and make the recommendations available to appropriate governmental units, agencies, and public officials.
- F. Do any other thing necessary or incidental to the administration of its authority or functions pursuant to this compact.

Article V - Cooperation With Federal Government

- A. If the laws of the United States specifically so provide, or if administrative provision is made within the federal government, the United States may be represented on the commission by not more than ten representatives. Representatives of the United States must be appointed and serve in the manner provided by or pursuant to federal law, and may be drawn from any branch of the federal government. No representative may have a vote on the commission.
- B. The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common education policies of the states, and may advise the agency or officer concerning any matter of mutual interest.

Article VI - Committees

- A. To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee must

consist of governors, one-fourth must consist of legislators, and the remainder must consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the commission must be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee do not affect its authority to act, but the commission at the next regular meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person may serve more than two terms as a member of the steering committee; provided, that service for a partial term of one year or less does not count toward the two-term limitation.

- B. The commission may establish advisory and technical committees composed of state, local, and federal functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.
- C. The commission may establish such additional committees as its bylaws may provide.

Article VII - Finance

- A. The commission shall advise the governor or designated officer of each party state regarding its budget and estimated expenditures for the period required by the laws of that party state. Each of the commission's budgets of estimated expenditures must contain specific recommendations regarding the amount to be appropriated by each party state.
- B. The total amount of appropriation requests under any budget must be apportioned among the party states. In making the apportionment, the commission shall devise and employ a formula that takes equitable account of the populations and per capita income levels of the party states.
- C. The commission may not pledge the credit of any party state. The commission may meet its obligations in whole or in part with funds available to it pursuant to paragraph G of Article III of this compact; provided, that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in this manner. Except when the commission makes use of funds available to it pursuant to paragraph G of Article III, the commission may not incur any obligation prior to the allotment of funds by the party states adequate to meet the obligation.
- D. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited annually by a qualified public

accountant, and the report of the audit must be included in and become part of the annual report of the commission.

- E. The accounts of the commission must be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.
- F. Nothing contained herein may be construed to prevent commission compliance with laws relating to the audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII - Eligible Parties; Entry Into and Withdrawal

- A. This compact has as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With respect to any jurisdiction not having a governor, the term "governor", as used in this compact, shall mean the closest equivalent official and the jurisdiction.
- B. A state or eligible jurisdiction may enter into this compact and it becomes binding on the state or jurisdiction when adopted; provided, that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions is required.
- C. Adoption of the compact may be either by enactment of the compact or by adherence to the compact by the governor; provided, that in the absence of enactment, adherence by the governor is sufficient to make a state a party only until December 31, 1967. Any party state may withdraw from this compact by enacting a statute repealing the compact. A withdrawal may not take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of withdrawal.

Article IX - Construction and Severability

This compact must be liberally construed to effectuate its purposes. The provisions of this compact are severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the application of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance is not affected. If this compact is held contrary to the constitution of any participating state, the compact must remain in full force and effect as to the state affected and as to all several matters.

15.1-04-02. Education commission of the states - Bylaws. Pursuant to paragraph I of Article III of the Compact for Education, the education commission of the states shall file a copy of its bylaws and any amendment to its bylaws with the secretary of state.

SECTION 5. Chapter 15.1-05 of the North Dakota Century Code is created and enacted as follows:

15.1-05-01. North Dakota educational telecommunications council - Membership. The North Dakota educational telecommunications council consists of:

1. The commissioner of higher education or the commissioner's designee.
2. The superintendent of public instruction or the superintendent's designee.
3. The director of the information services division of the office of management and budget.
4. A representative of the telephone industry, appointed by the governor.
5. A school board member, appointed by the governor.
6. A school district superintendent, appointed by the governor.
7. A schoolteacher, appointed by the governor.

15.1-05-02. North Dakota educational telecommunications council - Representation. The governor shall ensure that at all times the North Dakota educational telecommunications council has a school board member who represents a school district having an enrollment of fewer than five hundred students or a school district superintendent employed by the board of a school district having an enrollment of fewer than five hundred students.

15.1-05-03. North Dakota educational telecommunications council - Term of office. The term of office for each appointed member of the North Dakota educational telecommunications council is three years.

15.1-05-04. North Dakota educational telecommunications council - Compensation. The members of the North Dakota educational telecommunications council appointed by the governor must be reimbursed for actual necessary expenses incurred in the performance of their duties as members of the council at the same rates as provided by law for other state officers and employees. The costs incurred in reimbursing the members of the council for their actual necessary expenses must be paid by the superintendent of public instruction. The other members of the council are not entitled to any compensation or reimbursement for expenses incurred in performing their duties.

15.1-05-05. North Dakota educational telecommunications council - Powers and duties. The North Dakota educational telecommunications council shall:

1. Promote the use of technology and the development of technology systems to enhance educational opportunities within the state.
2. Cooperate with state agencies and other organizations to develop statewide educational technology systems.
3. Adopt bylaws for the conduct of its affairs.
4. Publish the informational material it deems necessary.
5. Conduct a continuing study to assess the needs, resources, and facilities that are available or which may be required to establish educational technology systems throughout the state.

6. Solicit and receive moneys from public and private sources and expend the moneys for educational technology projects; provided that the council may also require that a school district provide up to fifty percent in matching funds.

15.1-05-06. Educational telecommunications programs - Contract. The superintendent of public instruction may contract for the provision of educational telecommunications programs and systems in the areas of elementary, secondary, higher education, adult education, and any other areas that promote cultural development. The duration of a contract under this section may not exceed two years in length.

¹⁵⁹ **SECTION 6.** Chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

15.1-06-01. Schools free and accessible - School ages.

1. Each public school must be free, open, and accessible at all times to any child provided:
 - a. The child may not enroll in grade one unless the child reaches the age of six before September first of the year of enrollment;
 - b. The child may not enroll in kindergarten unless the child reaches the age of five before September first of the year of enrollment; and
 - c. The child has not reached the age of twenty-one before September first of the year of enrollment.
2. Notwithstanding the provisions of subsection 1, a school district may not enroll in grade one a child who is not six years old before September first, unless the child will be six years old before January first and:
 - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district can demonstrate special talents or abilities; or
 - b. The child has completed an approved kindergarten program.

15.1-06-02. School holidays.

1. Schools may not be in session on the following holidays:
 - a. Any Sunday.
 - b. New Year's Day, the first day of January.

¹⁵⁹ Section 15.1-06-04 was amended by section 3 of House Bill No. 1490, chapter 182, and section 2 of Senate Bill No. 2344, chapter 187. Section 15.1-06-07 was amended by section 49 of House Bill No. 1188, chapter 49.

- c. Good Friday, the Friday preceding Easter Sunday.
 - d. Memorial Day, the last Monday in May.
 - e. The anniversary of the Declaration of Independence, the fourth day of July.
 - f. Labor Day, the first Monday in September.
 - g. Veteran's Day, the eleventh day of November.
 - h. Thanksgiving Day, the fourth Thursday in November.
 - i. Christmas Day, the twenty-fifth day of December.
 - j. Any day declared to be a public holiday by the President of the United States or the governor.
2. Notwithstanding the provisions of subsection 1, if the first day of January, the fourth day of July, the eleventh day of November, or the twenty-fifth day of December is a Sunday, the school district shall observe the holiday on the following Monday.
 3. Notwithstanding the provisions of subsection 1, if the eleventh day of November is a Saturday, the school district shall observe the holiday on the preceding Friday.
 4. The board of a school district may direct that classes not be held on the day of a statewide election if the school is used as a polling place on that day.

15.1-06-03. School year - Definition. The school year begins on July first and ends on June thirtieth the following year.

15.1-06-04. School calendar - Length.

1. During each school year, a school district shall provide for a school calendar of at least one hundred eighty days, apportioned as follows:
 - a. One hundred seventy-three full days of instruction;
 - b. Three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
 - c. Two days for the attendance of teachers at the North Dakota education association instructional conference; and
 - d. Up to two full days during which parent-teacher conferences are held or which are deemed by the school board to be compensatory time for parent-teacher conferences held outside regular school hours.
2. A full day of instruction consists of:

- a. At least five and one-half hours of instruction time for elementary students; and
- b. At least six hours of instruction time for high school students.

15.1-06-05. School calendar - Modification. A school district may apply to the superintendent of public instruction for approval of a pilot program in which the district's school calendar is reduced below one hundred eighty days.

1. The superintendent may approve an application for a pilot program if:
 - a. It allows the district to evaluate the modifications in the traditional school calendar from the perspective of increased school facility use; and
 - b. In the opinion of the superintendent, the program offers educational opportunities equivalent to those available in a one-hundred-eighty-day school calendar.
2. A district submitting an application under this section shall specify:
 - a. The minimum number of days students will attend school; and
 - b. The comparable instructional time.
3. If the superintendent approves a district's application under this section, the district is eligible to receive the per student payments provided under chapter 15.1-28.
4. A district that operates an approved pilot program under this section for a period of three years may apply to the superintendent for permanent approval of the program.
5. The superintendent shall adopt rules governing the submission of applications, the evaluation of proposals, and any other matters necessary for the administration of pilot programs under this section.
6. A pilot program approved by the superintendent under this section satisfies the requirements for school operation and instructional time required by law.
7. A pilot program approved by the superintendent under this section does not affect the accrual of teachers' benefits provided by law.

15.1-06-06. Approval of public and nonpublic schools. Each public and nonpublic school in this state offering elementary or secondary education to students must be approved by the superintendent of public instruction. Except as otherwise provided by law, the superintendent may not approve a school unless:

1. Each classroom teacher holds a valid teaching certificate issued by the education standards and practices board;
2. The students are offered all subjects required by law; and
3. The school is in compliance with all local and state health, fire, and safety laws.

15.1-06-07. Nonpublic high schools - Approval criteria. The superintendent of public instruction shall approve any nonpublic high school having an enrollment of fifty students or fewer, provided:

1. The school meets all statutory requirements regarding the subjects to be taught, the length of the school year, and health, fire, and safety standards;
2. If the school uses telecommunications or other electronic means to deliver curricular programs, the programs are prepared by individuals holding at least baccalaureate degrees and delivered in the presence of an individual who holds a North Dakota secondary teaching certificate or who meets or exceeds the average cutoff scores of states that have normed the national teacher's examination;
3. The school employs at least one state certificated high school teacher to serve in a supervisory capacity for each twenty-five students;
4. The average composite scholastic achievement test scores of students enrolled in the school or the students' scores achieved on comparable standardized tests meet or exceed the national average test scores; and
5. The school and its employees are governed by a board of directors that includes parental representation.

15.1-06-08. Conditions for accreditation and approval - Waiver. The superintendent of public instruction may waive any condition for accreditation and approval for a reasonable period of time, provided the waiver encourages innovation, permits experimentation, and has the potential to result in an improved program. The superintendent may waive the conditions only with the concurrence of a majority of a waiver committee composed of one member appointed by the North Dakota education association, one member appointed by the North Dakota council of educational leaders, and one member appointed by the North Dakota school boards association.

15.1-06-09. Inspection of public schools - Submission of inspection report - Correction of deficiencies.

1. The state fire marshal or the state fire marshal's designee shall inspect each public school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the superintendent of the school district and the superintendent of public instruction.
2.
 - a. If a deficiency is noted, the superintendent of the school district shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee and the school board affected by the deficiency, but not later than the next budget period.
 - b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the school board, the school district superintendent, and the superintendent of public instruction. Upon a recommendation of immediate closure by the superintendent of public instruction, the

school board and the school district superintendent may immediately close some or all of the school until the fire hazard is eliminated. In the case of a closure, the school district superintendent shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

15.1-06-10. Inspection of nonpublic schools - Submission of inspection report - Correction of deficiencies.

1. The state fire marshal or the state fire marshal's designee shall inspect each nonpublic school in this state at least once every three years, prepare an inspection report, and provide copies of the report to the administrator of the school and the superintendent of public instruction.
2.
 - a. If a deficiency is noted, the administrator of the school shall submit a plan of correction to the state fire marshal or the state fire marshal's designee and shall remedy the deficiency within a time period acceptable to the state fire marshal or the state fire marshal's designee.
 - b. If the report discloses an imminent fire hazard, the state fire marshal or the state fire marshal's designee shall immediately notify the administrator of the school and the superintendent of public instruction. Upon a recommendation of immediate closure by the superintendent of public instruction, the administrator may immediately close some or all of the school until the fire hazard is eliminated. In the case of a closure, the administrator shall cooperate with the superintendent of public instruction to make adequate arrangements for the interim education of all affected students.

15.1-06-11. Exit doors - Free of obstructions. A school principal shall ensure that, during all hours students are in school, any door or doorway that could be used as an exit in case of fire or other emergency remains free of all obstruction and free of any device or mechanism which may impede immediate egress through the door or doorway. This section does not include doors that provide access solely to private offices, supply rooms, or storage rooms.

15.1-06-12. Emergency and disaster drills - Implementation. Each school district superintendent shall implement fire, tornado, and other emergency or disaster drills.

15.1-06-13. Schools - Compliance with health, safety, and sanitation requirements. The superintendent of each school district shall ensure that the schools in the district comply with all health, safety, and sanitation requirements.

15.1-06-14. Use of schools for purposes other than education. The board of a school district may permit the district's schools and facilities to be used for purposes other than the education of students, provided the usage does not interfere with the education of students. The board may impose restrictions on the usage provided the restrictions are nondiscriminatory and may impose a charge for the usage.

15.1-06-15. Solicitations and sales in schools - Permission required - Accounting for proceeds - Penalty.

1. No person may sell, solicit for sale, or advertise the sale of any merchandise, product, or service on school premises, or organize students for any such purpose, without first obtaining the permission of the school board, the school district superintendent, or the school principal. This section does not apply to a student or school district employee who sells or attempts to sell a single item of personal property or a limited number of personal property items.
2. The proceeds of any sale, by students or student groups, made for school activities must be accounted for to the school board not more than thirty days after the sale.
3. Any person who violates any provision of this section is guilty of an infraction.

15.1-06-16. Disturbance of a public school - Penalty. It is a class B misdemeanor for any person to:

1. Willfully disturb a public school that is in session;
2. Willfully interfere with or interrupt the proper order or management of a public school by an act of violence, boisterous conduct, or threatening language; or
3. Rebuke, insult, or threaten a teacher in the presence of a student.

15.1-06-17. United States flag - Display. The board of a school district shall display a United States flag on the grounds of each school in the district during each schoolday in seasonable weather.

15.1-06-18. School report - Review.

1. Annually, each public school principal shall complete a school report on forms provided by the superintendent of public instruction and submit the report to the school district superintendent.
2. The school district superintendent shall collect the completed reports and forward them to the superintendent of public instruction, who shall submit the reports to the governor.
3. Upon receiving the completed reports, the governor shall convene an ad hoc committee to review the information and to make any necessary changes in the information-gathering format.
4. The governor or a designee of the governor shall serve as the chairman of the ad hoc committee.
5. The membership of the ad hoc committee must include:
 - a. Two individuals selected by the governor from a list of five nominees proposed by the North Dakota council of educational leaders.

- b. Two individuals selected by the governor from a list of five nominees proposed by the North Dakota education association.
- c. Two individuals selected by the governor from a list of five nominees proposed by the North Dakota school boards association.
- d. Two individuals selected by the governor from a list of five nominees proposed by the North Dakota parent-teachers association.
- e. Two parents of school-age children selected by the governor.
- f. Two high school students selected by the governor.
- g. The superintendent of public instruction or a designee of the superintendent.

SECTION 7. Chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

15.1-07-01. School district - Corporate powers.

1. Each school district in this state is a public school district governed by the provisions of this title. Each school district is a body corporate. Each school district may sue and be sued, contract, and convey any real and personal property that comes into its possession.
2. The board of education of the city of Fargo is a body corporate. It has the power to sue and be sued and to contract with others. It possesses all the powers usual and incidental to a body corporate.

15.1-07-02. School district - Name change. In order for the name of a school district to be changed, the question must be placed before and approved by a majority of the district's qualified voters at a district election. The school board may place the question on the ballot by resolution and shall place the question on the ballot if it receives a petition signed by one-third of the qualified electors of the district. If a majority of the district's qualified voters approve the name change, the district must be renamed accordingly. The business manager of the district shall provide notification of the new name to the county auditor, the county superintendent of schools, and the superintendent of public instruction.

15.1-07-03. District's limit of indebtedness - Resolution.

1. The board of a school district may by resolution place on the ballot of any regular or special election the question of increasing the district's limit of indebtedness, beyond that fixed by the constitution, by five percent of the assessed valuation of all taxable property in the district.
2. The board of a school district shall place on the ballot of the next regular or special election the question of increasing the district's limit of indebtedness, beyond that fixed by the constitution, by five percent of the assessed valuation of all taxable property in the district, if the board receives a petition requesting the increase and signed by at least one-third of the district's qualified electors.

15.1-07-04. District's limit of indebtedness - Election - Notice. If an election is to include a question regarding an increase in the school district's limit of indebtedness, the board of the school district shall ensure that the question is clearly stated in the notice of election. If the board calls a special election to vote on the question of increasing the district's limit of indebtedness, the board shall publish notice of the election in the official newspaper of the district, at least fourteen days before the date of the election.

15.1-07-05. District's limit of indebtedness - Ballot. In an election to increase a school district's limit of indebtedness, the ballots must state the question in clear and concise language.

15.1-07-06. District's limit of indebtedness - Increase. If a majority of the votes cast are in favor of increasing the school district's limit of indebtedness, the limit is raised to ten percent of the assessed valuation of all taxable property in the district.

15.1-07-07. District's limit of indebtedness - Increase - Notification of county auditor. If a majority of the votes cast are in favor of increasing the school district's limit of indebtedness, the president of the school board and the school district business manager shall inform the county auditor, in writing, of the election results and of the fact that the district's limit of indebtedness has been increased to ten percent of the assessed valuation of all taxable property in the district.

15.1-07-08. School district funds - Transfers. At the time of preparing the annual budget, a school board, by resolution, may transfer from the general fund of the district the amount of money, in whole or in part, by which the balance in the general fund exceeds the amount that would be required for the general reserve fund in the ensuing fiscal year, into any sinking funds of the district established and held for the payment of outstanding bonds.

15.1-07-09. Sinking fund - Transfers - Increases. If a school board transfers money into a sinking fund, the board may not consider the money to be cash on hand when computing the budget for the ensuing fiscal year. A school board may not through transfers increase a sinking fund to the extent that the sinking fund is greater than the amount needed to pay the bond issue in full.

15.1-07-10. Activities fund. The board of a school district shall establish an activities fund for the support of school-related extracurricular activities. The school district business manager shall deposit all receipts from extracurricular activities in the activities fund. The business manager shall submit to the school board a monthly report of receipts, expenditures, and balances in the activities fund.

15.1-07-11. Incidental revolving fund. The board of a school district may establish a revolving fund from which to pay incidental expenses. The board shall establish the amount to be retained in the incidental fund and must draw the amount from the general fund of the district. The school district superintendent or another school administrator designated to draw checks on the fund shall submit a monthly report to the school board listing the checks drawn, the payee, and the purpose for which each check was drawn.

15.1-07-12. Negotiable instruments - Payment by business manager. The business manager shall pay out moneys only upon the presentation of a negotiable instrument authorized by the president of the school board and only if there is sufficient money available for the payment. Upon issuing a negotiable instrument, the business manager shall make a record of the instrument.

15.1-07-13. Negotiable instruments - Cancellation - Description in minutes.

The board of a school district, at a regular meeting, may cancel all negotiable instruments that have remained unpaid for one year or more. Before canceling a negotiable instrument, the board shall enter in its minutes a brief description of the instrument, including the name of the payee, and the number, date, and amount of each instrument to be canceled. If any party entitled to payment appears and shows cause for the delay in presenting the instrument for payment, the board may issue a new instrument in the amount to which the party is entitled, unless the board is barred from so doing by the statute of limitations.

15.1-07-14. Qualified elector.

1. An individual who is a qualified elector of this state may:
 - a. Vote to elect board members for the school district in which the individual resides.
 - b. Serve as a board member for the school district in which the individual resides.
 - c. Serve as a judge or clerk of election for the school district in which the individual resides.
 - d. Serve as the business manager of a school district.
2. For the purposes of elections held under this chapter, an individual residing on a military installation is deemed to be a resident of a school district if the school district admits students from the military installation pursuant to a contract and receives impact aid pursuant to Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.], as amended.

15.1-07-15. School district election - Violation - Penalty. An individual who willfully violates the provisions of this title in relation to elections is guilty of a class A misdemeanor.

15.1-07-16. New district - Enumeration. The board of a school district organized after the annual enumeration has been taken shall proceed immediately to take the enumeration, as provided by law, and after receipt of the enumeration by the superintendent of public instruction through the county superintendent of schools, the newly organized district shall receive its share of apportioned funds.

15.1-07-17. School district contracts - Conflict of interest - Penalty.

1. A school board member or other school officer who has a conflict of interest in any contract requiring the expenditure of school funds shall disclose the conflict to the board and may not participate in any discussions or votes regarding that contract without the consent of all other board members.
2. For purposes of this section, a conflict of interest means the personal, professional, or pecuniary interest of an individual, the individual's spouse or relative, or the individual's business or professional associate.
3. After the disclosure required by subsection 1 has been made, a board may engage in future contracts with the individual for the purchase of

goods and services, provided that the amount of a contract does not exceed eight thousand dollars.

4. Any person who violates this section is guilty of a class A misdemeanor.

15.1-07-18. Offer of reward - Purchase of school supplies - Penalty. It is a class A misdemeanor for any person to give or offer to a county superintendent of schools, a school board member, or a school district employee a commission, fee, or other reward for the purchase by the district of any textbooks, furniture, or school supplies.

15.1-07-19. Reward for purchase of school supplies - Penalty. It is a class B misdemeanor for a county superintendent of schools, a school board member, or a school district employee to accept a commission, fee, or other reward for the purchase by the district of any textbooks, furniture, or school supplies.

15.1-07-20. Schoolbus driver - Requirements.

1. To be eligible to drive a schoolbus or other school vehicle, an individual must:
 - a. Hold a valid North Dakota driver's license;
 - b. Be free from communicable diseases;
 - c. Be in good physical health and have normal use of both hands, both feet, both eyes, and both ears;
 - d. Be of sound mental health;
 - e. Pass any drug and alcohol screening tests required by the school board; and
 - f. Be at least twenty-one years of age, unless the board of a school district determines that an individual not meeting this requirement can safely and adequately perform the required duties.
2. Each year, the board of a school district shall designate licensed health care professionals, as defined by department of transportation standards, to examine schoolbus and school vehicle drivers.
3. Prior to commencing duties as the driver of a schoolbus or other school vehicle, whether employed by the school district or by another entity with whom the school board has contracted, and every two years thereafter, an individual shall present to the school board verification by a designated health care professional that the individual has been examined and meets the health requirements of this section.
4. This section does not prohibit teachers or administrators employed by the district from operating vehicles for the purpose of transporting students to regular or special events related to educational programs in which the students are enrolled.

15.1-07-21. School district business manager - Duties. The business manager of a school district shall:

1. Keep a true and accurate record of all school board proceedings.
2. Hold all books and records of the district and deliver them to the business manager's successor in office.
3. Prepare and submit an annual report to the board and to the county superintendent of schools.
4. Authorize the preparation of all negotiable instruments as directed by the board.
5. Perform all duties required by law.
6. Perform duties required by the board.
7. Keep true and accurate district financial records.
8. Prepare and submit a school district financial report to the board quarterly or in the case of a business manager for a district having only one-room or two-room schools, to submit the report at the request of the board.
9. Produce all district financial records when directed to do so by the board.
10. Maintain custody of all district moneys coming into the business manager's hands.
11. Pay out district moneys under the business manager's control as directed by the board.
12. Receive and maintain custody of all moneys to which the district or the board is entitled.

15.1-07-22. School district business manager - Affirmation or oath of office. An individual appointed as a school district business manager shall take and file an affirmation or oath of office before commencing duties.

15.1-07-23. School district business manager - Bond. A school district business manager shall furnish to the school board a bond in an amount to be fixed by the school board and equal to at least twenty-five percent of the maximum amount of money subject to the business manager's control at any one time. The bond must be conditioned for the faithful discharge of the business manager's duties, including the maintenance of accurate financial records and the safekeeping and deliverance of all school district property and funds that come into the business manager's control.

15.1-07-24. School district business manager - Funds - Accounting. Unless otherwise provided by law, the business manager of a school district is responsible for the safekeeping of all school district funds. The business manager shall keep a general account of the district's receipts and expenditures and itemized accounts for

each class of receipts and expenditures, unless otherwise directed by the superintendent of public instruction.

15.1-07-25. School district records - Open - Exception.

1. Except as otherwise provided by law, all records and documents of a school district are open to examination by any person. These records and documents, or copies certified by the business manager, are prima facie evidence of the facts set forth in the records and documents.
2. If a complaint is filed concerning a school district employee and an administrative investigation is conducted, any record or document generated as part of the administrative investigation is confidential and not subject to the requirements of this section or section 44-04-18, until the investigation is completed. The investigation and any determination of disciplinary action may not exceed sixty days from the date the complaint is filed.

SECTION 8. Chapter 15.1-08 of the North Dakota Century Code is created and enacted as follows:

15.1-08-01. Military installation - School district formation. The state board of public school education may form a school district on a military installation provided:

1. The state board is requested to do so by the base commander of the installation;
2. The state board schedules and holds a public hearing after publishing notice of the hearing in the official newspaper of the county in which the proposed school district is to be located, at least fourteen days before the date of the hearing; and
3. The boundaries of the district are coterminous with all lands over which the installation has exclusive concurrent or proprietary jurisdiction.

15.1-08-02. Military installation - School board members - Terms of office - Qualifications - Vacancies. The board of a school district formed under this chapter consists of five members. The superintendent of public instruction shall adopt rules providing appointment procedures. The superintendent, after consultation with the base commander and with the approval of the state board of public school education, shall appoint board members in April of each year. The board members must reside on the military installation. The school board members shall serve three-year terms except that the superintendent of public instruction shall designate two of the members initially appointed to serve two-year terms and two of the members initially appointed to serve one-year terms. If a vacancy occurs, the school board shall appoint an individual to serve for the remainder of the unexpired term.

15.1-08-03. Military installation - Organization of school board - Meetings. A majority of the military installation school board constitutes a quorum. The assent of a majority of the members present is necessary for the transaction of any business. The annual meeting of the school board must be held during the month of July following the appointment to the board, on a date called by the president and convenient to the rest of the members. At the annual meeting in July, the board members shall elect one member to serve as president for a one-year term. Notice of any regular or special meeting must be given, in writing, to each member of the

board; provided that the attendance at any meeting, without objection, by any board member constitutes a waiver of the notice required to be given to the member. The board must hold regular meetings for transacting business. Special meetings may be called by the president or by any two members of the board.

15.1-08-04. Military installation - School board - Duties. A school board established under this chapter shall:

1. Give primary consideration to the education and social well-being of the students residing in the school district.
2. Respect the wishes of the students' parents regarding the provision of education to the students.
3. Contract for the provision of education to the students residing in the district.
4. Conduct all board meetings as required by section 44-04-19.

15.1-08-05. Military installation - School board - Business manager. A school board established under this chapter may employ and compensate a business manager. The individual employed as a business manager may not be a member of the school board. The school board may dismiss or suspend the business manager without notice for serious cause. In other instances, the board may dismiss the business manager upon thirty days' written notice.

15.1-08-06. Military installation - School districts - Application of other laws.

1. The duties set forth in section 15.1-09-28 are applicable to the president of a school board governing a military installation district established under this chapter.
2. The duties set forth in sections 15.1-09-33, 15.1-09-35, and 15.1-09-38 are applicable to a school board governing a military installation district established under this chapter unless other agreements have been reached.
3. The duties set forth in section 15.1-07-22 are applicable to a business manager of a military installation school district established under this chapter.
4. The compensation and expense reimbursement levels set forth in section 15.1-09-06 are applicable to members of a school board governing a military installation district established under this chapter.
5. Sections 15.1-07-10 through 15.1-07-13, 15.1-07-24, and 15.1-07-26 are applicable to military installation school districts established under this chapter.

15.1-08-07. School district agreements.

1. This chapter does not affect any agreement entered before March 28, 1989, between the Emerado elementary public school district and the Grand Forks public school district. Any agreement entered between those school districts continues under the terms provided in the agreement or for as long as both school districts continue to operate and

the Grand Forks air force base contracts for full educational services from the Grand Forks public school district.

2. Before the state board of public school education requests that a school district be established pursuant to this chapter on the Minot air force base, the Glenburn public school district and the Minot public school district must enter into an agreement regarding the provision of education to the students residing on the air force base. The agreement must be approved by the state board of public school education. The Minot public school district and the Glenburn public school district, in entering into an agreement, must take into consideration current and potential revenues, including current and potential revenues from property taxes, in lieu of property taxes, and federal and state funds that are distributed to school districts based on census, and losses that may occur as a result of the agreement. The state board of public school education must receive approval from the United States secretary of education prior to the formation of the proposed school district.
3. Before the state board of public school education requests that a school district be established on a military installation other than the Grand Forks air force base and the Minot air force base pursuant to this chapter:
 - a. The school districts providing education to students residing on a military installation must enter into an agreement regarding the provision of education to those students. The agreement must be approved by the state board of public school education. School districts entering into the agreement must take into consideration current and potential revenues and losses that may occur as the result of the agreement; and
 - b. The state board of public school education must receive approval from the United States secretary of education regarding the formation of the proposed school district.

¹⁶⁰ **SECTION 9.** Chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

15.1-09-01. School board membership - Size and term adjustments.

1. The board of a school district is composed of five members, unless:
 - a. The electors of the district increase the size of the board under this section;
 - b. The size of the board was increased under a prior law; or
 - c. The board, on July 1, 1971, was composed of more or fewer than five members, in which case the number of members must remain unchanged unless increased under this section.

¹⁶⁰ Section 15.1-09-34 was amended by section 2 of Senate Bill No. 2066, chapter 186.

2. The size of any school district board may be increased to either five, seven, or nine members or decreased to seven or five members if a petition is signed by at least one-third of the qualified electors of the district and the change is approved by a majority of the qualified electors of the district voting on the question at a special election called for that purpose.
3. If a majority of the qualified voters in a district elect to increase the size of the school board, the additional members must be elected to the board at the next annual district election in the same manner as other board members.
 - a. If the total number of board members after approval of the increase is five, the terms of two members extend until the first annual election, the terms of two members extend until the second annual election, and the term of the remaining member extends until the third annual election.
 - b. If the total number of board members after approval of the increase is seven, the terms of three members extend until the first annual election, the terms of two members extend until the second annual election, and the terms of the remaining two members extend until the third annual election.
 - c. If the total number of board members after approval of the increase is nine, the terms of three members extend until the first annual election, the terms of three members extend until the second annual election, and the terms of the remaining three members extend until the third annual election.
 - d. The length of the terms specified in this section must be determined by lot.
 - e. All board members shall serve for the terms specified in this section and until their successors are elected and qualified.
 - f. The length of any term in existence before the increase in board membership and held by a board member who is duly qualified may not be modified.
 - g. Terms subsequent to the first term are for the normal period of three years and extend until a successor is elected and qualified.
4. The voters of a school district shall elect school board members at large. If, however, the district has been reorganized, board members may be elected at large, by geographical area, or at large by geographical area.
5. An election on a reorganization proposal takes the place of the petition and election requirements of this section. Approval of the reorganization proposal has the same effect as if the approval were by the election provided for in this section.
6. If the qualified electors of a district approve a reduction in the size of the school board, the excess number of members will serve out existing terms until the number approved by the electors has been reached.

7. If the board of a school district has elected to convert its members' terms to four years and has also increased the number of its board members, the board by lot or by some other random selection method shall provide for a combination of initial terms of office not to exceed four years for the new members. The combination must equalize to the greatest extent possible the number and length of terms for old board members and for new members to be elected during the next three election years. The members' terms must be staggered and must expire in even-numbered years.
8. Notwithstanding the provisions of this section, the board of education of the city of Fargo consists of nine members.

15.1-09-02. School boards - Terms of office. The term of each elected member of a school board is three years, except when the member is completing the unexpired term of another. The term of office for a school board member begins at the annual meeting in July following the member's election and continues until a successor is elected and qualified. The term of office for a member of the board of education of the city of Fargo begins at the first regular monthly meeting after the annual school district election held on the third Tuesday of April.

15.1-09-03. School boards - Changes in terms of office.

1. A school board by resolution may change the terms of office for its members from three to four years. The resolution must provide that upon the expiration of each member's current three-year term, the term of office for that position on the board will become four years. The resolution may provide for the conversion of one position to a two-year term and, thereafter, to a four-year term. If the resolution so provides, the term must be chosen by lot. If as a result of an extension to four years a term would conclude in an odd-numbered year, the resolution must provide for one transitional three-year term before the four-year term commences.
2. If a school board changes its terms of office as provided for in this section:
 - a. References in this title to annual elections mean biennial elections when applied to the board; and
 - b. The election held pursuant to section 15.1-09-31 must be held in even-numbered years.
3. A school board that has converted the terms of its members to four years may revert to three-year terms by passing a resolution providing for the reversion. When the four-year term of each board member holding office on the date of the resolution's passage expires, the term of office for that position becomes three years.

15.1-09-04. Rural members of school board - Definitions.

1. a. At least two members of a school board must be rural members if a district contains six or more sections of land, has a city within its boundaries, and a district population of two thousand or fewer.

- b. At least one member of a school board must be a rural member if a district contains six or more sections of land, has within its boundaries a city of more than two thousand but fewer than fifteen thousand, and has at least twenty-five families residing on farms outside the corporate limits of the city but within the district and sending children to school in the district.
 - c. If the taxable valuation of agricultural property in the rural area of a district containing a city is greater than the taxable valuation of the urban area, the majority of the members of the school board must be rural members.
 - d. If the variance in population between the geographic voting areas of a school district is greater than ten percent, all qualified voters in the district may vote for each school board candidate.
 2. For purposes of this section, a rural school board member is one who resides on a farm outside the corporate limits of a city or one who resides within a city that according to the latest federal census has a population of two hundred or fewer and is located within a district that has four or more incorporated cities.
 3. For purposes of this section:
 - a. "Agricultural property" means property located outside the limits of an incorporated city and zoned agricultural.
 - b. "Rural" means outside the limits of an incorporated city.

15.1-09-05. School board - Vacancies - Appointments.

1. The business manager of a school district shall notify the county superintendent that a vacancy exists on the school board.
2. The board of a school district shall fill by appointment or special election any vacant seat on the board. The term of an individual selected by appointment or special election to fill a vacancy extends until a successor is elected and qualified at the next annual election. If a school board fails to fill a vacancy by appointment or fails to call a special election to fill a vacancy within sixty days from the time the vacancy occurred, the county superintendent shall call a special election to fill the vacancy. The election must be conducted in the same manner as the annual school district election.
3. If a vacancy reduces the membership of a school board to less than a quorum, the state board of public school education shall appoint to the school board as many individuals as necessary to achieve a quorum. The school board then shall fill the remaining vacancies. After the vacancies have been filled, any individual appointed by the state board shall resign and the school board shall fill the vacancy in accordance with this section. After resigning, the individual who had been appointed by the state board may be reappointed by the school board to fill the vacancy.

4. The causes for which a vacancy may be declared include a member's death, resignation, removal from office by a court of competent jurisdiction, and relocation to a residence outside the school district.
5. The business manager shall certify any appointment made under this section to the county superintendent of schools.

15.1-09-06. School board members - Compensation. Each school board shall set a level of compensation for services payable to its members, provided that no member may receive more than one thousand dollars annually for this purpose. In addition to compensation for services, each member may be reimbursed for all necessary meals and lodging and travel expenses actually incurred while engaged in official business of the board, at the same rate as provided for state officers and employees. Any mileage claimed may not exceed the number of miles [kilometers] between the points traveled as measured by the most usual route.

15.1-09-07. School district election - Conduct. Unless otherwise provided by law, a school district election must be conducted and the votes must be canvassed in the same manner as in the election of county officers.

15.1-09-08. School district elections - Candidate filings. An individual seeking election to the board of a school district shall prepare and sign a document stating the individual's name and the position for which that individual is a candidate. If the election is held in conjunction with a statewide election, the document must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the sixtieth day before the election. If the election is not held in conjunction with a statewide election, the document must be filed with the school district business manager, or mailed to and in the possession of the business manager, by four p.m. of the thirty-third day before the election.

15.1-09-09. School district elections - Notice. At least fourteen days before the date of an annual or special school district election, the school board shall publish a notice in the official newspaper of the district stating the time and place of the election and the purpose of the vote. If a school board agrees to hold the election in conjunction with a primary election, the deadline for giving notice of the school district election and the purpose of the vote must meet the publishing requirements of the county. The governing body of the city of Fargo shall publish notice with respect to Fargo school district elections.

15.1-09-10. School district elections - Form of notice. A notice for the election of school board members must state the purpose for the election, the date of the election, and the time at which the polls will open and close.

15.1-09-11. School district elections - Preparation of ballots - Stickers.

1. At least twenty days before the election, the business manager shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all individuals who have indicated their intent to be candidates by meeting the provisions of section 15.1-09-08. The business manager shall determine by lot, in the presence of the candidates or their representatives, the arrangement of the candidates' names upon the ballot.
2. The ballot must be nonpartisan in form and include:

- a. The words "official ballot" at the top;
 - b. The name of the school district;
 - c. The date of the election;
 - d. The number of persons to be elected to each office; and
 - e. Below the list of candidates for each office, blank spaces in which names not printed on the ballot may be written.
3. An individual who wishes to be a candidate for election, is qualified to hold office, and has failed to meet the filing requirements of section 15.1-09-08 may provide stickers to be attached to the official ballot by the electors. A sticker must have the name and address of the individual printed on it. The sticker may not be more than one-half inch [12.7 millimeters] in height.

15.1-09-12. School district elections - Poll hours. The school board shall determine the time at which polls must open and close for school district elections. Polls may open at any time after seven a.m. and must be open by eleven a.m. Polls must remain open until seven p.m. and may remain open until eight p.m. In Fargo school district elections, polls must open and close at the times required for city elections.

15.1-09-13. Election precincts - Polling places - Election officials.

1. At least thirty-five days prior to the annual election, the board of each school district shall designate one or more precincts for the election. The board shall arrange the precincts in a way that divides the electors of the district as equally as possible. No precinct may have a population in excess of six thousand residents, as shown by the last federal decennial census.
2. At least thirty-five days prior to the annual election, the board of each school district shall designate one or more polling places for the election. The board shall locate the polling places as conveniently as possible for the voters in the precinct. Once established by the board, a polling place must remain the polling place for a precinct until it is changed by subsequent action of the board.
3. The board shall appoint two election judges and two election clerks for each precinct. Before opening the polls, the judges and clerks shall take an affirmation or oath to perform their duties according to law and to the best of their ability. The affirmation or oath may be administered by any officer authorized to administer oaths or by any of the judges or clerks.

15.1-09-14. School district election - Vote tally. Upon the closing of the polls, the judges shall count and canvass the votes for each office. Within forty-eight hours after the closing of the polls, the judges and clerks of the election shall sign the returns and file them with the business manager of the school district.

15.1-09-15. School district election - Declaration of winner. The school board shall canvass all election returns and shall declare the result of an election within three days of the election and, in the case of a tie, within three days from the

determination of a winner. The individual receiving the highest number of votes for an office must be declared elected. The board shall record the result of the election.

15.1-09-16. School district election - Tie breaker. If the election results in a tie, the business manager of the district shall notify, in writing, the candidates between whom the tie exists. Within three days after the election, at a time agreed upon by the candidates, the election must be decided in the presence of the judges and clerks of the election, in a manner agreed upon by the candidates. The school district business manager shall make and keep a record of the proceedings.

15.1-09-17. Notification of elected individuals - Notice to county superintendent of schools. Within five days after a school district election, the business manager of the school district shall provide to each elected individual written notice of the individual's election and of the duty to take an affirmation or oath of office. Within ten days after the election, the business manager shall certify the individuals elected and their terms to the county superintendent of schools.

15.1-09-18. School district election - Absentee ballots - Recounts. Absentee ballots must be available in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to school district elections, except:

1. 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;
2. The school district business manager shall perform the duties of the county auditor when the election is not combined with the county;
3. The school board takes the place of the county canvassing board; and
4. All expenses of the recount must be paid as provided in section 15.1-09-21.

15.1-09-19. Duties of election officials - Other applicable statutes. Sections 16.1-08.1-03.3, 16.1-10-01, 16.1-10-06, 16.1-10-06.1, 16.1-10-07, 16.1-10-08, 16.1-13-22, 16.1-13-23, 16.1-13-30, 16.1-15-01, 16.1-15-04, and 16.1-16-04 apply to elections held under sections 15.1-09-09 and 15.1-09-11.

15.1-09-20. Election officials - Compensation. Election officials at school district elections are entitled to receive compensation as provided for election officials in section 16.1-05-05. The board of a school district holding the election shall provide for the compensation from school district funds.

15.1-09-21. School district elections - Expenses. A school district is responsible for the payment of all expenses incurred as a result of a school district election.

15.1-09-22. School boards - Annual elections - Poll books.

1. The board of a school district shall hold an election each year between April first and June thirtieth to fill all vacancies, including those caused by the expiration of terms of office.
2. Upon resolution of the school board, the annual election may be held in conjunction with the regular election of a city, as required by state law or by the home rule powers of the city, provided the city is located

wholly or partially within the school district. The school board may agree with the governing body of the city to share election costs and responsibilities, including those associated with election personnel, the printing of election materials, the publishing of legal notices, and the use of poll books.

3. If a school board holds its election in conjunction with a city, references in this chapter to the date of a school board election mean the date of the applicable city election.
4. If a school board holds its election in conjunction with a city and only one set of poll books is used, the set must reference the voter's eligibility to vote in the city election, in the school district election, or both.

15.1-09-23. School boards - Special elections. In addition to the annual election, a special election may be held at any time and for any lawful purpose, if approved by the school board.

15.1-09-24. School boards - Sharing of election expenses. If a school district election is held in conjunction with a primary election, the board of the school district may agree with the governing body of the county or counties in which the district is located to share election costs and responsibilities, including those associated with a canvassing board, election personnel, the printing of election materials, the publishing of legal notices, and the use of poll books.

15.1-09-25. School board members - Affirmation or oath of office. An individual elected as a member of or appointed to a school board shall take and file with the school district business manager an affirmation or oath of office before commencing duties.

15.1-09-26. Affirmation or oath of office - Administration. An elected member of a school board may administer any affirmation or oath of office required of school board members or school district personnel.

15.1-09-27. Organization of school board - Election of president. At the annual meeting, school board members shall elect from among themselves a president to serve for one year. Members of the Fargo board of education shall elect their president and a vice president at the first regular monthly meeting following the election of new board members.

15.1-09-28. School board president - Duties. The president shall preside at all meetings of the school board, appoint all committees subject to approval by the board, provide authorization for the issuance of negotiable instruments, and perform other acts required by law. A vice president may be elected by the board to serve in the absence of the president at any meeting.

15.1-09-29. School board - Quorum - Majority vote. The board of a school district consists of the members elected according to the provisions of this chapter. A majority of the board constitutes a quorum. The agreement of a majority of those members present is necessary for the transaction of any business.

15.1-09-30. School boards - Meetings.

1. Each school board shall hold an initial meeting during the month of July following the annual election, except that the initial meeting for the board of education of the city of Fargo must take place at the time of

the first regular monthly meeting after its annual election. The president of the school board shall select a meeting date that is convenient to the other board members and shall provide board members with written notice of the meeting.

2. Once during each month thereafter, a board shall hold a regular meeting for the transaction of business. The board of any school district having only one-room and two-room schools may meet as often as the board deems necessary, but not less than four times in each year.
3. Special meetings may be called by the president or by any two members of a board. Written notice of a special meeting must be given to each member of a board.
4. The attendance of a board member at any meeting, without objection, constitutes a waiver of the notice requirement for that member.
5. A board of a school district operating under an academic cooperative agreement approved by the superintendent of public instruction may participate in multiboard meetings in addition to, instead of, or in conjunction with the regular board meetings required by this section. Multiboard meetings must be for the purpose of pursuing joint academic or cooperative activities and must be held at the times and locations agreed to by the presidents of the participating boards. In addition to any other requirements set forth in section 44-04-20, the presidents of each school board shall ensure that notice of each multiboard meeting in which the school board will participate is published in the local newspapers of general circulation at least one week before the meeting date.

15.1-09-31. School board proceedings - Publication. Every two years, at the time of a school district's annual election of board members, the electors of the district shall determine whether a record of the board proceedings must be published in the official newspaper of the district. If a majority of the electors voting on the question approve the publication, the school district business manager shall provide for publication of the school board records, including an itemized list of obligations approved for payment. If applicable, the business manager shall request that the proceedings be identified as being published subject to review and revision by the board. The business manager shall ensure that the proceedings are published within a reasonable time after each board meeting. A vote to approve the publication is effective for a period of two years or until disapproved at a succeeding school district election.

15.1-09-32. School board members - Attendance at workshop. Within one year of assuming office, each newly elected school board member shall attend an inservice training workshop hosted by the North Dakota school boards association or its designee. The workshop must include presentations on the role of a school board member, the duties of a school board, and education finance.

15.1-09-33. School board - Powers. The board of a school district may:

1. Establish a system of free public schools for all children of legal school age residing within the district.
2. Organize, establish, operate, and maintain elementary, middle, and high schools.

3. Have custody and control of all school district property and, in the case of the board of education of the city of Fargo, to have custody and control of all public school property in the city and to manage and control all school matters.
4. Acquire real property and construct school buildings and other facilities.
5. Relocate or discontinue schools and liquidate the assets of the district as required by law; provided no site may be acquired or building constructed, or no school may be organized, established, operated, maintained, discontinued, or changed in location without the approval of the state board of public school education if outside the boundary of the district.
6. Purchase, sell, exchange, and improve real property.
7. Lease real property for a maximum of one year except in the case of a vocational education facility constructed in whole or in part with financing acquired under chapter 40-57, which may be leased for up to twenty years.
8. Exercise the power of eminent domain to acquire real property for school purposes.
9. Purchase, sell, exchange, and if appropriate, improve school equipment, furniture, supplies, and textbooks.
10. Recruit or contract with others to recruit homes and facilities which provide boarding care for special education students.
11. Provide dormitories for the boarding care of special education students.
12. Insure school district property.
13. Independently or jointly with other school districts, purchase telecommunications equipment or lease a telecommunications system or network.
14. Provide for the education of students by another school district.
15. Contract with federal officials for the education of students in a federal school.
16. Prescribe courses of study in addition to those prescribed by the superintendent of public instruction or by law.
17. Adopt rules regarding the instruction of students, including their admission, transfer, organization, grading, and government.
18. Join the North Dakota high school activities association and pay membership fees.
19. Adopt alternative curricula for high school seniors who require fewer than four academic units.
20. Contract with, employ, and compensate school district personnel.

21. Contract with and provide reimbursement for the provision of teaching services by an individual certified as an instructor in the areas of North Dakota American Indian languages and culture by the education standards and practices board.
22. Suspend school district personnel.
23. Dismiss school district personnel for cause.
24. Participate in group insurance plans and pay all or part of the insurance premiums.
25. Contract for the services of a district superintendent, provided that the contract, which may be renewed, does not exceed a period of three years.
26. Contract for the services of a principal.
27. Employ a school district business manager.
28. Suspend or dismiss a school district business manager for cause without prior notice.
29. Suspend or dismiss a school district business manager without cause with thirty days' written notice.
30. Defray the necessary and contingent expenses of the board.
31. Levy a tax upon property in the district for school purposes.
32. Amend and certify budgets and tax levies, as provided in title 57.
33. Pay membership dues to county and state associations.
34. Designate, at its annual meeting, a newspaper of general circulation as the official newspaper of the district.

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than eight thousand dollars unless the board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.

- e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building contracts under chapters 48-01.1 and 48-02.
 - g. School transportation services.
 - h. Vehicle fuel.
 - i. Heating fuel.
2. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

15.1-09-35. Reports by school boards on conditions of schools. Upon the conclusion of each school year, the board of a school district shall:

1. Prepare a report regarding the condition of all schools in the district, including their financial condition and the educational progress of students enrolled in each school;
2. Forward a copy of the report to the county superintendent of schools; and
3. Publish in the official newspaper of the school district that portion of the report which deals with the financial condition of each school.

15.1-09-36. School board - Authority over student fees.

1. A school board may:
 - a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
 - b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
 - c. Require that a student furnish personal or consumable items.
 - d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.
 - e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
 - f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
 - g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.
 - h. Require that a student pay a fee for behind-the-wheel driver's education instruction.

- i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including vocational and technical programs, and adult or continuing education programs.
 - j. Require that a student pay any other fees and charges permitted by statute.
2. A board may waive any fee if a student or the student's parent or guardian is unable to pay the fee.
3. A board may not deny or abridge a student's rights or privileges, including the receipt of grades and diplomas, because of the nonpayment of fees. A board, however, may withhold a student's diploma for failure to pay for costs incurred by the student's own negligence or choice, including fines for damaged textbooks and school equipment, library fines, and materials purchased from the school at the option of the student.
4. This section does not preclude the operation of a school store where students may purchase school supplies and materials.
5. If a board charges fees not authorized by law and refuses to discontinue the charges when directed to do so by the superintendent of public instruction, the superintendent shall withhold the per student and transportation aid payments to which the district is entitled for each student charged an unauthorized fee.

15.1-09-37. Duties of school board - Postsecondary instructional programs - Fees. A school board may charge reasonable fees for goods, including textbooks, and services provided in connection with any postsecondary instructional program, including vocational and technical programs, adult or continuing education programs, and similar education programs beyond grade twelve or outside of established elementary, middle school, and secondary education programs.

15.1-09-38. Duties of school board - Employment of relatives. The board of a school district may not employ as a teacher an individual who is related to a member of the board by blood or marriage, unless a majority of the board members, plus one, vote their concurrence with the employment.

15.1-09-39. Districts in bordering states - Contract.

1. Notwithstanding any other provision of law, the board of a school district in this state may contract with the board of a school district in another state for the joint operation and maintenance of school facilities and for joint activities, if the districts are contiguous. To be valid, the contract must be approved by the superintendent of public instruction and by a majority of the qualified electors residing in the district.
2. In assessing the contract, the superintendent shall consider the district's enrollment, its valuation, and its longevity.

3. If the superintendent approves the contract, the board shall submit the contract to the electorate of the district, for approval, at an annual or a special election.
4. The board shall publish notice of the election in the official newspaper of the district at least fourteen days before the election. The notice must include a statement regarding the purpose of the election and the terms of the contract.
5. On the ballot, the board shall seek the voters' permission to execute the proposed contract, as approved by the superintendent of public instruction.
6. If the voters approve the execution of the contract, the board may levy and collect taxes to carry out the contract pursuant to law.
7. If a district that is a party to a contract under this section dissolves, any district to which the land of the dissolved district is attached shall assume the contractual responsibilities.

15.1-09-40. Sharing of levied taxes - Contract. The boards of two or more school districts may contract to share levied taxes in all or a portion of their respective districts. The rate of taxes to be levied on any property in the joint taxing area or district is the rate of tax provided for in the contract, not exceeding any levy limitations applicable to the property. The auditor of each county in which all or a portion of a contracting district is located shall fix and levy taxes on that portion of the property which is described in the contract and is located in the county at the rate set by the contract.

15.1-09-41. School board authority - Reward for destruction of school property. The board of a school district may offer and pay a reward to any person who furnishes information leading to the apprehension and conviction of one appropriating or destroying property or equipment belonging to the district.

15.1-09-42. Educational meetings - Attendance by school district personnel. The board of a school district shall allow each district superintendent, principal, and teacher to attend the North Dakota education association's annual instructional conference or the North Dakota council of educational leaders' annual conference without loss of pay.

15.1-09-43. Purchase of schoolbus - Payment period. The board of a school district may purchase a bus body, a chassis, or a complete bus, provided the body, chassis, or complete bus meets standards provided by section 39-21-27.1. A board may use money in its general fund to purchase a bus body, a chassis, or a complete bus on an installment plan, provided the plan does not extend beyond six years.

15.1-09-44. Schoolbuses - Use of nonprofit organizations. The board of a school district may make a schoolbus available to a nonprofit organization for use in conjunction with the organization's activities. The board shall negotiate the terms of usage with the organization. The terms must address rental charges and insurance coverage. The driver of a schoolbus used by a nonprofit organization under this section must satisfy the requirements for a schoolbus driver set forth in section 15.1-07-21.

15.1-09-45. Storage facilities for schoolbuses. The board of a school district may lease for purchase, purchase, or construct a storage facility for schoolbuses

upon advertised bids as provided in section 15.1-09-34. For these purposes, the board may use money in the district's general fund or building fund provided the money is not otherwise obligated.

15.1-09-46. School district census. The board of a school district shall conduct a census during the month of May in each odd-numbered year. The census must enumerate all district residents under age eighteen as of August thirty-first and include their names and the names and addresses of their parents. The board shall approve the census and forward a copy of the census to the county superintendent prior to July fifteenth of the year in which the census is taken. The county superintendent shall submit a summary of the census to the superintendent of public instruction.

15.1-09-47. Board of education of city of Fargo - Taxing authority.

1. The board of education of the city of Fargo may levy taxes, as necessary for any of the following purposes:
 - a. To purchase, exchange, lease, or improve sites for schools.
 - b. To build, purchase, lease, enlarge, alter, improve, and repair schools and their appurtenances.
 - c. To procure, exchange, improve, and repair school apparatus, books, furniture, and appendages, but not the furnishing of textbooks to any student whose parent is unable to furnish the same.
 - d. To provide fuel.
 - e. To defray the contingent expenses of the board, including the compensation of employees.
 - f. To pay teacher salaries after the application of public moneys, which may by law be appropriated and provided for that purpose.
2. The question of authorizing or discontinuing the unlimited taxing authority of the board of education of the city of Fargo must be submitted to the qualified electors of the Fargo school district at the next regular election upon resolution of the board of education or upon filing with the board a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the individuals enumerated in the most recent school district census. However, if the electors approve a discontinuation of the unlimited taxing authority, their approval of the discontinuation may not affect the tax levy effective for the calendar year in which the election is held. In addition, the minimum levy may not be less than the levy that was in force at the time of the election. The board may increase its levy in accordance with section 57-15-01. If the district experiences growing enrollment, the board may increase the levy by an amount equal to the amount levied the preceding year per student times the number of additional students enrolled during the new year.

15.1-09-48. Board of education of city of Fargo - Tax collection. The board of education of the city of Fargo has the power to levy taxes and to cause such taxes to be collected in the same manner as other city taxes. The board of education shall cause the rate for each purpose to be certified by the business manager to the city

auditor in time to be added to the annual tax list of the city. It is the duty of the city auditor to calculate and extend upon the annual assessment roll and tax list any tax levied by the board of education. The tax must be collected as other city taxes are collected. If the city council fails to levy any tax for city purposes or fails to cause an assessment roll or tax list to be made, the board of education may cause an assessment roll and tax list to be made and submit the roll to the city auditor with a warrant for the collection of the tax. The board of education may cause the tax to be collected in the same manner as other city taxes are collected or as otherwise provided by resolution of the board.

15.1-09-49. Board of education of city of Fargo - Taxes for buildings. The amount to be raised for teacher salaries and contingent expenses must be such only as together with the public money coming to the city from any source is sufficient to establish and maintain efficient and proper schools for students in the city. The tax for purchasing, leasing, or improving sites and the building, purchasing, leasing, enlarging, altering, and repairing of schools may not exceed in any one year fifteen mills on the dollar valuation of the taxable property of the city. The board of education may borrow, and when necessary shall borrow, in anticipation of the amount of the taxes to be raised, levied, and collected.

15.1-09-50. Board of education of city of Fargo - Powers. In addition to the powers granted to all school boards by section 15.1-09-32, the board of education of the city of Fargo has the power and duty:

1. To organize, establish, and maintain schools in the city and to change and discontinue the schools; and to liquidate the assets of discontinued schools outside the district boundaries, as authorized by the state board of public school education.
2. To lease houses or rooms for school purposes, lease lots or sites for schools, and fence real property.
3. To build, enlarge, alter, improve, and repair schools and appurtenances upon lots or sites now owned or leased for school purposes.
4. To provide, sell, exchange, improve, and repair school apparatus, books for indigent students, and appendages.
5. To provide fuel and other supplies for the schools.
6. To have the custody and safekeeping of the schools, books, furniture, and appurtenances and to see that local ordinances regarding schools are observed.
7. To compensate teachers out of the money appropriated and provided by law for the support of the public schools in the city so far as the same is sufficient, and to pay any remainder due from the money raised as authorized by this chapter.
8. To have the control and management of the public schools of the city and from time to time adopt rules for their good order, prosperity, and utility.
9. To prepare and report to the mayor and the city council ordinances and regulations necessary for the protection, safekeeping, and care of the schools, lots, sites, and appurtenances and all the property belonging to

the city, connected with and appertaining to the schools, and to suggest proper penalties for the violation of ordinances and regulations.

15.1-09-51. Board of education of city of Fargo - School property.

1. The title to all schools, sites, lots, furniture, books, apparatus, and appurtenances, belonging to the city, and used for school purposes, under the control of the board of education are vested in the city of Fargo for the use of the schools. While used for or appropriated to school purposes, the same may not be:
 - a. Levied upon or sold by virtue of any warrant, execution, or other process;
 - b. Subject to any judgment or lien; or
 - c. Subject to taxation for any purpose.
2. The city in its corporate capacity is competent to accept and dispose of any real or personal estate transferred to it by gift, grant, bequest, or devise, for the use of the public schools of the city, whether the property is transferred to the city or to any person for the use of the schools.

15.1-09-52. Board of education of city of Fargo - Ownership of real property.

Whenever any real property is purchased by the board, the transfer or grant and conveyance of the property must be taken to the "city of Fargo for the use of the schools" and whenever any sale is made by the board, it must be so resolved and placed upon the records of the board. The conveyance must be executed, in the name of the city of Fargo, by the president of the board and attested to by the business manager. The president and the business manager may execute conveyances upon a sale or exchange, with or without full covenants or warranty, on behalf of the city.

SECTION 10. Chapter 15.1-10 of the North Dakota Century Code is created and enacted as follows:

15.1-10-01. County committee - Appointment - Compensation.

1. The county superintendent of schools, with the approval of the board of county commissioners, shall appoint residents, equal in number to the board of county commissioners, to serve as a county committee for purposes of school district annexations, dissolutions, and reorganizations.
2. The term of office for county committee members is three years, staggered so that one term expires each year.
3. If a vacancy occurs, the county superintendent, with the approval of the board of county commissioners, shall appoint an individual to serve for the unexpired portion of the term. If a county committee member fails, refuses, or is unable to perform the required duties, the county superintendent, upon being petitioned by a majority of the school board presidents representing districts having territory wholly or partially within the county, shall declare the position of the member vacant and shall appoint a new member to the committee.

4. Each member is entitled to compensation at the rate of sixty-two dollars and fifty cents per day and to reimbursement for expenses from the biennial appropriation for the superintendent of public instruction, as provided by law for state officers, if they are attending committee meetings or performing duties directed by the committee.

15.1-10-02. County committee - Chairman - Meetings. The members of the county committee shall elect one member to serve as chairman for one year and until a successor is chosen. Meetings of the committee must be held upon the call of the chairman or a majority of the committee members.

15.1-10-03. County committee - Secretary. The county superintendent of schools is the secretary of the committee but may not vote. The county superintendent is entitled to compensation from the employing county for actual and necessary expenses incurred while in the performance of required duties.

15.1-10-04. State's attorney to represent committee. Each county's state's attorney shall serve as legal counsel to the county committee. The state's attorney shall defend the committee and any of its officers in legal proceedings relating to the conduct or business of the committee. If providing this defense would cause a conflict with the other duties of the state's attorney, the board of county commissioners, at county expense, shall employ a special counsel to represent the committee in the proceedings.

¹⁶¹ **SECTION 11.** Chapter 15.1-11 of the North Dakota Century Code is created and enacted as follows:

15.1-11-01. County superintendent of schools - Employment - Qualifications.

1. Except as provided in section 15.1-11-02, each board of county commissioners shall employ a county superintendent of schools on a full-time or a part-time basis. An individual hired under this section:
 - a. Must hold a baccalaureate degree from a regional or nationally accredited institution of higher education approved for teacher education.
 - b. Must hold a valid North Dakota teacher's certificate.
 - c. Must have experience teaching at an approved elementary, middle, or secondary school.
 - d. Must be approved by a majority of the school board presidents representing school districts having their administrative headquarters in the county.
 - e. Serves until the individual resigns or is discharged by the board of county commissioners at the direction of a majority of the school board presidents referenced in subdivision d.

¹⁶¹ Section 15.1-11-01 was amended by section 50 of House Bill No. 1188, chapter 162.

2. The presidents of the school boards referenced in subsection 1 shall perform the duties of school boards with respect to the evaluation, renewal, and discharge of an individual hired under this section.

15.1-11-02. County superintendent of schools - Assignment of duties - Waiver.

1. Notwithstanding any other provision of law, a board of county commissioners, by majority vote may choose not to employ a county superintendent of schools, provided the board of county commissioners:
 - a. Obtains from the superintendent of public instruction a form that lists all statutory duties to be otherwise performed by a county superintendent and provides for the assignment of all such statutory duties to, and the performance of such statutory duties by, one or more individuals;
 - b. Obtains the consent of a majority of the school board presidents representing school districts having their administrative headquarters in the county;
 - c. Submits the completed form to the superintendent of public instruction; and
 - d. Obtains written approval of the assignments from the superintendent of public instruction.
2. a. The superintendent of public instruction may waive the requirements of subsection 1 with respect to any board of county commissioners which, on or before June 30, 1999, assigned to qualified persons the duties of the county superintendent of schools, provided:
 - (1) The assignment of duties was set forth in a written plan;
 - (2) The written plan was filed with the legislative council; and
 - (3) The superintendent of public instruction determines that the written plan substantially complies with the requirements of subsection 1.
- b. The determination of the superintendent regarding the waiver is final.

15.1-11-03. County superintendent of schools - Salary. The county superintendent of schools is entitled to receive a salary, as determined under section 11-10-10.

15.1-11-04. County superintendent of schools - Duties. A county superintendent of schools shall:

1. Serve as the superintendent of all schools in a county except those schools in districts that employ a district superintendent of schools.
2. Receive copies of and review, in a timely manner, all reports submitted to the superintendent of public instruction by school districts having their administrative headquarters in the county.

3. Compile reports containing statistics and any other information requested by the superintendent of public instruction and forward the reports at the time and in the manner directed by the superintendent of public instruction.
4. If requested by a school district, assist in planning, coordinating, and providing education and related services.
5. Promote coordination and cooperation among the school districts and the multidistrict special education units within the county.
6. Assist school districts in taking advantage of incentive programs administered by the superintendent of public instruction.
7. As secretary of the county committee:
 - a. Provide to the public information regarding the annexation of property to another school district;
 - b. Provide to the public all forms necessary for the annexation of property to another school district;
 - c. Compile information regarding school district annexations and dissolutions and provide such information to the appropriate county committees, at the time and in the manner directed by the state board of public school education; and
 - d. Compile information regarding school district annexations, reorganizations, and dissolutions, and provide such information to the state board of public school education, at the time and in the manner directed by the state board.
8. Perform any other duties required by law.

15.1-11-05. Preservation of records. The county superintendent of schools shall provide for the preservation of all property that is acquired in an official capacity and which has educational value and interest or which records official acts by the county superintendent. At the conclusion of the county superintendent's employment, the county superintendent shall deliver the property to the superintendent's successor.

15.1-11-06. Clerks - Office and supplies. The board of county commissioners shall determine the number and salaries of administrative assistants for the county superintendent of schools and shall furnish a suitable office for the county superintendent, together with all necessary equipment, furniture, and supplies. If the board of county commissioners fails to do so, the county superintendent may provide the same and the board of county commissioners shall audit and pay the reasonable expenses so incurred.

SECTION 12. Chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

15.1-12-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Annexation" means the alteration of a school district's boundaries through the removal of real property from one school district and its attachment to another contiguous school district.
2. "Contiguous" means two or more tracts of real property which share a common point or which would share a common point but for an intervening road or right of way.
3. "Dissolution" means the process through which a school district ceases to function and the subsequent attachment of its real property to other school districts.
4. "Reorganization" means the formation of a new school district through the combination, in whole or in part, of two or more school districts.
5. "State board" means the state board of public school education.

15.1-12-02. Annexation of property to school district - Exchange - Petition - Requirements. An individual may petition to have property in one school district annexed to another school district by an exchange of property with property in a contiguous school district. In order to be approved:

1. The petitioner must reside within the boundary of the property to be exchanged;
2. The petitioner must obtain the written approval of one qualified elector from each residence within the boundary of the property referenced in subsection 1;
3. The petitioner must obtain written authorization for the exchange of property from the owner of the property to be exchanged in the adjacent district, provided that the owner need not reside on the property to be exchanged;
4. The difference in the taxable valuation of the property involved in the exchange may not exceed one thousand dollars;
5. Each property involved in the exchange is contiguous with the school district to which it is being annexed; and
6. Except as otherwise provided in this section, the annexation by an exchange of property under this section is subject to, and meets, all other statutory requirements regarding annexations.

15.1-12-03. Annexation of property to school district - Eligibility. Real property may be annexed to a school district provided:

1. The property to be annexed constitutes a single area that is contiguous to the school district;
2. The property to be annexed does not constitute an entire school district;
3. The annexation petition is signed by two-thirds of the qualified electors residing on the property to be annexed;

4. The annexation petition is filed with the county superintendent of schools whose jurisdiction includes the administrative headquarters of the district;
5. A public hearing is held by the county committee or the county committees, as required in section 15.1-12-05; and
6. The annexation petition is approved by the state board.

15.1-12-04. Annexation of property to school district - Petition requirements.

1. A petition to request the annexation of property must:
 - a. Be obtained from the county superintendent of schools;
 - b. Identify all property to be annexed, before circulation;
 - c. Identify one child whose place of residence is on the property to be annexed and whose parent has stated an intention to send the child to a public school in the district receiving the property during the school year following the effective date of the annexation;
 - d. Be signed in the presence of the petition carrier; and
 - e. Be submitted to the county superintendent whose jurisdiction includes the administrative headquarters of the district.
2. Any person who wishes to add or remove that person's name from the annexation petition may do so until five p.m. on the last business day before the public hearing by the county committee; provided the person appears before the county superintendent to request the action.
3. This section does not apply to annexations involving an exchange of property.

15.1-12-05. Annexation of property to school district - Hearing.

1. Upon receiving a petition for the annexation of property to a school district, the county superintendent shall schedule and give notice of a public hearing regarding the annexation.
2. The county superintendent shall publish notice of the public hearing in the official newspaper of the county in which the major portion of each affected school district's real property is situated, at least fourteen days before the date of the hearing. If no newspaper is published in the county, the county superintendent shall publish the notice in a newspaper in an adjoining county in this state.
3. Before the hearing, the county committee shall:
 - a. Determine the number of qualified electors residing on the property to be annexed;
 - b. Ensure that two-thirds of such qualified electors have signed the petition; and

- c. Ensure that all other statutory requirements regarding the petition have been met.
4. At the hearing, the county committee shall accept testimony and documentary evidence regarding:
 - a. The value and amount of property held by each affected school district;
 - b. The amount of all outstanding bonded and other indebtedness of each affected district;
 - c. The levies for bonded indebtedness to which the property will be subjected or from which the property will be exempted, as provided for in section 15.1-12-08;
 - d. The taxable valuation of each affected district and the taxable valuation under the proposed annexation;
 - e. The size, geographical features, and boundaries of each affected district;
 - f. The number of students in each affected district;
 - g. The general population of each affected district;
 - h. Each school in the district, including its name, location, condition, the grade levels it offers, and the distance that students living in the petitioned area would have to travel to attend school;
 - i. The location and condition of roads, highways, and natural barriers in each affected district;
 - j. Conditions affecting the welfare of students residing on the property to be annexed;
 - k. The boundaries of other governmental entities;
 - l. The educational needs of communities in each affected district;
 - m. Potential savings in school district transportation and administrative services;
 - n. The potential for a reduction in per student valuation disparity between the affected districts;
 - o. The potential to equalize or increase the educational opportunities for students in each affected district; and
 - p. All other relevant factors.
5. Following consideration of the testimony and documentary evidence presented at the hearing, the committee shall make specific findings of fact and approve or deny the annexation. If the annexation is approved, the county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the proceeding

and the county committee's decision to the state board for final approval of the annexation.

6. a. Except as provided in this subsection, the state board shall conduct a hearing, accept and consider testimony and documentary evidence regarding the proposed annexation, make specific findings, and approve or deny the annexation.
 - b. If no opposition is presented to the county committee at the hearing and the county committee approves the annexation, the state board may review the record of the county committee and give final approval to the annexation without holding its own hearing.
 7. If the school districts involved in a proposed annexation include property in more than one county, but the major portion of each district's property is in the same county, the county committee of that county shall consider the annexation petition.
 8. If the school districts involved in a proposed annexation are situated in more than one county and the major portion of each district's property is not in the same county, the county committees of those counties encompassing the major portion of each school district shall jointly consider the annexation petition.
 9. If a county committee denies the annexation, another petition involving any of the same property may not be submitted to the county committee for a period of three months from the date on which the original petition was filed with the county superintendent. A petition involving any of the same property cited in the original petition may not be considered by a county committee more than twice in a twelve-month period.
 10. If the state board denies the annexation, another petition involving any of the same property may not be submitted to the county committee for a period of three months after the state board's denial. A petition involving any of the same property cited in the original petition may not be considered by the state board more than twice in a twelve-month period.
 11. a. If an annexation petition is considered by a single county committee, the decision of the county committee may be appealed to the state board.
 - b. If an annexation petition is considered by more than one county committee and at least one county committee approves the annexation, the decision may be appealed to the state board.
 - c. If an annexation petition is considered by more than one county committee and denied by each county committee, the decision may not be appealed to the state board.
12. Each annexation must receive final approval from the state board.
 13. The county superintendent with whom the petition has been filed shall forward all minutes, records, documentary evidence, and other information regarding the annexation, and the county committee's

decision to the state board for final approval or for consideration of an appeal.

14. A decision of the state board with respect to an annexation petition may be appealed to the district court of the judicial district in which the property to be annexed is located.

15.1-12-06. Annexation of property to school district - Effective date.

Annexations under this chapter become effective on July first following final approval by the state board.

15.1-12-07. Transfer of real property upon annexation, reorganization, or dissolution. The legal title to all real property owned by a school district and annexed to another school district, included in a reorganized district, or subjected to dissolution, vests in the board of the reorganized school district or of the district to which the property is annexed or attached on the effective date of the reorganization, annexation, or dissolution. If the reorganized district or district to which the property is annexed or attached includes less than the whole of the former district, legal title to the real property of the former district vests in the board of the school district in which the property is situated on the effective date of the reorganization, annexation, or dissolution. A certificate prepared by a licensed attorney, citing the legal description of the property and stating that the property has become annexed, attached, or reorganized with another school district, must be recorded in the office of the register of deeds of the county in which the property is located.

15.1-12-08. Payment of school district levies after annexation or dissolution.

1. Property annexed or attached to the receiving school district is subject to all of the receiving school district's levies, except those to retire bonded debt existing before the effective date of the annexation or dissolution. The county committee and the state board in approving the annexation or dissolution, however, may require that the property be subject to the receiving school district's levies that are required to retire bonded debt existing before the effective date of the annexation or dissolution.
2. Property annexed to a receiving school district is not subject to any levies of the school district from which it was detached, except those to retire bonded debt existing before the effective date of the annexation. The county committee and the state board in approving the annexation, however, may exempt the property from the levies of the school district from which the property was detached which are required to retire bonded debt existing before the effective date of the annexation.

15.1-12-09. School district reorganization - Initiation of a reorganization plan.

In order for two or more contiguous school districts or contiguous portions of two or more school districts to initiate a reorganization process, the board of each participating school district must:

1. Vote to pursue the reorganization;
2. Prepare a reorganization plan;
3. Approve the reorganization plan; and
4. Submit the plan to the county superintendent having jurisdiction over the major portion of property in each participating school district.

15.1-12-10. School district reorganization - Contents of plan - Public hearing - Testimony and evidence.

1. The reorganization plan required by section 15.1-12-09 must:
 - a. Include a map showing the boundaries of each participating district and of the proposed new district;
 - b. Include the demographic characteristics of each participating district, including the population per age group;
 - c. Include the number of students enrolled in each participating district during the current school year and during the ten preceding school years;
 - d. Include projected student enrollments for the ensuing ten years;
 - e. Include the location and condition of all school buildings and facilities in each participating district and intended uses for the buildings and facilities;
 - f. Address planned construction, modification, or improvement of school buildings and facilities located within the boundaries of the new district;
 - g. Address planned course offerings by the new district;
 - h. Include the planned administrative structure of the new district and the number of full-time equivalent personnel to be employed by the new district;
 - i. Include the planned number of members who will constitute the board of the new district and the manner in which the members are to be elected;
 - j. Address plans regarding student transportation;
 - k. Identify other governmental entities, including multidistrict special education units and area vocational and technology centers, which may provide services to the new district;
 - l. Include the taxable valuation and per student valuation of each participating district and the taxable valuation and per student valuation of the new district;
 - m. Include the amount of all bonded and other indebtedness incurred by each participating district;
 - n. Address the planned disposition of all property, assets, debts, and liabilities of each participating district, taking into consideration section 15.1-12-18;
 - o. Include a proposed budget for the new district and a proposed general fund levy and any other levies, provided that tax levies submitted to and approved by the state board as part of a

reorganization plan are not subject to mill levy limitations otherwise provided by law; and

- p. Include any other information that the participating school districts wish to have considered by the county committee or the state board.
2. Upon receiving a reorganization plan, the county superintendent shall schedule and give notice of a public hearing regarding the plan.
3. The county superintendent shall publish the notice in the official newspaper of the county at least fourteen days before the date of the hearing.
4. If no newspaper is published in the county, the county superintendent shall publish the notice in the official newspaper of an adjoining county in this state.
5. Before the hearing, the county committee shall review the reorganization plan and ensure that all statutory requirements have been met.
6. At the hearing, the county committee shall accept testimony and documentary evidence regarding the reorganization plan.
7. Following consideration of the testimony and documentary evidence presented at the hearing, the committee shall approve or deny the reorganization plan.
8. If the plan is approved by at least one county committee, the county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the proceeding, and the county committee's decision, to the state board for final approval.
9. To become effective, a reorganization plan must meet all statutory requirements and must receive approval by both the state board and a majority of electors residing within the boundaries of the proposed new district.

15.1-12-11. School district reorganization - Approved plan - Special election - Formation of new district.

1. If the state board approves a reorganization plan, the state board shall notify each county superintendent of schools having jurisdiction over real property in the proposed new district. A county superintendent receiving notice under this section shall call a special election in order that the electors residing within the boundaries of the proposed new district may approve or reject the reorganization plan. The election must be held between July first and December thirty-first of the year in which the plan is approved by the state board. If there are insufficient days left in the year to meet the notice requirements of this section, the election must be held the following year.
2. The county superintendent shall give notice of the election by publishing the time, date, and place of the election in the official newspaper of the county, at least fourteen days before the date of the election.
3. The election notice must:

- a. State that the election has been called for the purpose of approving or rejecting a plan to form a new school district;
 - b. Describe the boundaries of the proposed new district; and
 - c. Include a statement describing the adjustment of property, debts, and liabilities proposed in the plan, together with the proposed tax levy.
4. The county superintendent shall appoint judges and clerks of the election. The election must be conducted in the same manner and the polls must open and close at the same time as specified for school district elections.
 5. The result of the elections must be certified by the participating school boards and delivered to the county superintendent within three days after the closing of the polls.
 6. If a majority of electors residing within each school district vote to approve the reorganization plan, the county superintendent shall make the necessary adjustments of property, debts, and liabilities and perform all duties required by law in order to establish and organize the new school district.

15.1-12-12. School district reorganization - Vote on issuance of bonds.

1. If the reorganization plan proposes the issuance of bonds under chapter 21-03, the question of the bond issuance may be voted on at the same election as that for which approval of the reorganization plan is sought; provided:
 - a. Each of the school boards involved in the reorganization adopts, by a majority vote, an identical initial resolution required by chapter 21-03; and
 - b. All of the terms of chapter 21-03 are complied with, except that if there is a conflict with section 15.1-12-14 regarding how the election will proceed, the terms of section 15.1-12-14 prevail.
2. If the reorganization is not approved, the result of the vote on the bond issuance is void.

15.1-12-13. School district reorganization - Proposal rejection - Revision - New election.

1. If the electors reject the reorganization plan, the county committee, after a period of three months from the date of the special election, may hold a public hearing as provided for in section 15.1-12-10 to consider a revised reorganization plan proposed by the participating school districts. If the county committee approves a revised plan, the county superintendent shall submit the revised plan to the state board for approval.
2. If the state board approves the revised plan, it shall notify the county superintendent of schools. A county superintendent receiving notice under this section shall follow the procedures set forth in this chapter for

calling a special election to approve or reject the revised plan. If a majority of the electors residing within each school district vote to approve the revised reorganization plan, the county superintendent shall make the necessary adjustments of property, debts, and liabilities and perform all duties required by law in order to establish and organize the new school district.

15.1-12-14. School district reorganization - School boards - Assumption of duties.

1. Upon approval of a reorganization plan by the electors, in accordance with section 15.1-12-11, a school board for the reorganized district must be elected at the next regular school district election or at a special election called by the county superintendent of schools for that purpose. The first school board election in a newly reorganized district is governed by chapter 15.1-09.
2. Members of newly formed school boards representing reorganized districts may not enter upon the duties of office until the time specified in section 15.1-12-18, except as provided in sections 15.1-12-15 and 15.1-12-16. Before the completion of a reorganization, the board of an existing district may not contract or obligate the district, except with the approval of the county committee.

15.1-12-15. School district reorganization - School board - Duties.

1. The board of a reorganized school district established under this chapter shall negotiate with the district's teachers and may contract with the teachers' representative organization prior to the effective date of the reorganization. If by five p.m. on July first of the year the reorganized district begins operations, a negotiated agreement has not been entered between the board and the teachers pursuant to statute, no teacher employed by the board may receive less in salary and benefits than that teacher received for the preceding school year. For purposes of this section, "salary and benefits" means salary, insurance benefits, teachers' fund for retirement contributions, personal leave, sick leave, accumulated sick leave, extracurricular salary, reduction-in-force policy, grievance procedures, and recall procedures.
2. On or before February first of the year in which the reorganization becomes effective, the board of the reorganized school district shall hold a public hearing to present the curriculum, course offerings, and staff positions to be available during the coming school year. The board shall publish notice of the hearing in the official newspaper of each county having land in the reorganized district, at least fourteen days before the date of the hearing.
3. By five p.m. on April fifteenth of the year in which the reorganization becomes effective, the board of the reorganized school district shall notify in writing each teacher employed by the districts being reorganized, whether or not the teacher will be offered a contract of employment with the reorganized district.

15.1-12-16. School district reorganization - Issuance of bonds - Procedure.

Before a reorganization is effective, the board of a reorganized school district established under this chapter may proceed in accordance with chapter 21-03 to

issue bonds for purposes specified in that chapter if the bond issuance is provided for by the approved reorganization plan.

15.1-12-17. School district reorganization - Elementary schools. An elementary school in existence at the time a reorganization becomes effective may be closed upon approval of the board. Unless otherwise directed by the superintendent of public instruction, a school closed under this section may be reopened only upon resolution of the school board and only at the beginning of a school year that follows by at least ninety days the date of the school board's closure vote.

15.1-12-18. School district reorganization - Approval of plan - Effective date - Transfer of all property. A reorganization plan takes effect on the first day of July following its approval by the voters. Within thirty days from the effective date of the reorganization, personnel from school districts incorporated in whole or in part into a reorganized district shall turn over to the board of the reorganized district all property and assets as required by the approved reorganization plan. Unless otherwise provided, debts, obligations, and liabilities of the districts or parts of districts incorporated into the reorganized district become the debts, obligations, and liabilities of the reorganized district.

15.1-12-19. School district reorganization - Sale or removal of school buildings. The board of a reorganized district may sell or move a school building located in the district. If a petition calling for the sale of a school building is signed by a majority of the qualified electors residing within the boundaries of a former school district now wholly located within the boundaries of the reorganized district, and is submitted to the board, the board shall sell the building. If the petition calls for the board to move the building, the board shall move the building to the location designated in the petition. The board shall deposit proceeds of the sale in either the district's general fund or the building fund. If the purchaser or recipient of the building is a political subdivision of this state, the board, upon a unanimous vote, may sell the building for less than its fair market value.

15.1-12-20. School district reorganization - Cost of elections. If the electors reject a reorganization plan, the cost of the election must be borne by each school district that had real property included in the proposed district. The percentage of the total cost for which each district is obligated is the same as the percentage that the district's real property included in the proposed reorganized district bears to the total amount of real property in the proposed reorganized district. If the electors approve a reorganization plan, the cost of the election is borne by the newly reorganized district.

15.1-12-21. School district reorganization - Changes in plan.

1. All provisions of a reorganization plan, except those relating to boundaries and geographic voting areas, may be changed upon the concurrence of a majority of the qualified electors voting on the question. The question may be placed before the voters at a regular or special election upon a motion of the school board and shall be placed before the voters upon receipt by the board of a petition signed by at least:
 - a. Twenty-five percent of the qualified electors residing in the district, if the population of the district, as determined by the county superintendent, is less than twenty-five qualified electors;

- b. Twenty percent of the qualified electors residing in the district, if the population of the district is at least twenty-five but not more than four thousand; or
 - c. Fifteen percent of the qualified electors residing in the district, if the population of the district is greater than four thousand.
2. Notwithstanding the provisions of subsection 1, if a school district has been reorganized for at least ten years, the boundaries of geographic voting areas may be changed upon the concurrence of a majority of qualified electors voting on the question.
 3. By resolution, the board in a reorganized district may change to at large voting for school board members 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.

15.1-12-22. School district reorganization - Board - Powers after five years - Exceptions.

1. Beginning five years after the effective date of the reorganization, the board of a reorganized district may exercise all powers granted to a school board by law, regardless of limitations contained in the district's reorganization proposal.
2. Notwithstanding subsection 1, the board of a reorganized district may change geographic voting areas only in accordance with section 15.1-12-23.

15.1-12-23. School district reorganization - Proportionate tax rate on agricultural property. A school district that for school purposes imposed on agricultural property a proportionate tax rate different from the school district levy on other taxable property, as permitted by repealed sections 15-53.1-37 and 15-53.1-38 on December 31, 1984, shall continue to levy the proportionate tax rate unless the school board is directed, by a majority of the district's qualified electors voting on the question, to discontinue the proportionate tax rate. No other school board may impose a proportionate tax rate on different classes of property within the district.

15.1-12-24. Nonoperating school district - Reorganization or dissolution. A school district that ceases to provide educational services within the district must become, within one year, through a process of reorganization or dissolution, part of a district operating an approved school. If a school district affected by this section has not become part of a district operating an approved school within the prescribed time limit, the school district must be dissolved. This section does not apply to military installation school districts.

15.1-12-25. Nonoperating school district - Transportation. The school board of the district to which a nonoperating district is attached shall provide transportation to students residing within the boundaries of the attached land in the same manner that transportation is provided to all other students in the district.

15.1-12-26. Dissolution of school district - Grounds.

1. A county committee shall initiate proceedings to dissolve a school district and attach the property to other operating school districts when it is

notified in writing by the county superintendent of schools whose jurisdiction includes the administrative headquarters of the district that:

- a. The district is financially unable to effectively and efficiently educate its students;
 - b. The district has not operated a school as required by section 15.1-12-24; or
 - c. A school board has determined that dissolution is in the best interest of its students.
2. Except as provided in subsection 3, a county committee shall initiate proceedings under section 15.1-12-27 to attach real property to an operating school district when it is notified in writing by the county superintendent that:
- a. Real property has been severed from its school district by the expansion of a city and the severed portion is not contiguous with its district; or
 - b. There exists real property that does not belong to a school district.
3. If a school district reorganization plan which does not include all real property in a district is approved by the electors, the county committee shall, within forty-five days after the election, hold a hearing under section 15.1-12-29 to attach the remaining property to one or more operating districts.
4. Receipt of notice by a county committee under this section:
- a. Renders an annexation petition involving any real property in the district void, unless the annexation has already been approved by the state board; and
 - b. Prohibits the acceptance of a new annexation petition involving any real property in the district until all dissolution proceedings have been completed.
5. One or more annexation petitions may not be used to annex all of the real property in a school district to surrounding school districts.

15.1-12-27. Dissolution of school district - Notice - Hearing - Order of attachment.

1. The county superintendent shall schedule and give notice of a public hearing regarding the dissolution of the district and the subsequent attachment of the property to other districts. The county superintendent shall publish the notice in the official newspaper of each county that encompasses property in the dissolving district and in the official newspaper of each county that encompasses property in a district adjacent to the dissolving district, at least fourteen days before the date of the hearing. The county superintendent shall provide notice of the public hearing to the business manager of each school district adjacent to the dissolving district.

2. At the hearing, the board of the dissolving district may propose a particular manner of dissolution.
3. The county committee shall consider testimony and documentary evidence regarding:
 - a. The value and amount of property held by the dissolving school district;
 - b. The amount of all outstanding bonded and other indebtedness;
 - c. The distribution of property and assets among the districts to which the dissolved district is attached;
 - d. The taxable valuation of the dissolving district and adjacent districts and the taxable valuation of adjacent districts under the proposed manner of dissolution;
 - e. The size, geographical features, and boundaries of the dissolving district and of adjacent districts;
 - f. The number of students in the dissolving district and in adjacent districts;
 - g. The general population of the dissolving district and adjacent districts;
 - h. Each school in the dissolving district and in adjacent districts, including its name, location, condition, accessibility, and the grade levels it offers;
 - i. The location and condition of roads, highways, and natural barriers in the dissolving district and in adjacent districts;
 - j. Conditions affecting the welfare of students in the dissolving district and in adjacent districts;
 - k. The boundaries of other governmental entities;
 - l. The educational needs of communities in the dissolving district and in adjacent districts;
 - m. Potential savings in school district transportation and administrative services;
 - n. The anticipated future use of the dissolving districts' buildings, sites, and playfields;
 - o. The potential for a reduction in per student valuation disparities between the districts to which the dissolved district is attached;
 - p. The potential to equalize or increase the educational opportunities for students from the dissolving district and for students in adjacent districts; and
 - q. All other relevant factors.

4. After the hearing, the county committee shall make findings of fact. Subject to final approval by the state board, the county committee may order the district dissolved and its real property attached to one or more contiguous, operating school districts.
5. Any property ordered attached under this section must have at least one minor residing within its boundaries.
6. The county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the dissolution proceeding together with a copy of the county committee's order to the state board for final approval of the dissolution.
7. The order of dissolution becomes effective July first following approval by the state board, unless the county committee provides for a different effective date.
8. If the boundaries of the dissolving school district cross county lines, the proceeding to dissolve the district must be conducted jointly by the county committees representing counties containing twenty-five percent or more of the dissolving district's taxable valuation. If, after the hearing, a majority of the county committees are unable to agree upon an order of dissolution and attachment, the county superintendent of the county in which the administrative headquarters of the dissolving school district is located shall notify the state board. The state board shall conduct a public hearing, as required in this section, and order the dissolution of the district and the attachment of its real property to adjacent districts in the manner it deems appropriate.
9. If any portion of the order providing for the attachment of real property is suspended or voided, the order of dissolution is likewise suspended or voided.

15.1-12-28. Dissolution of school district - Unobligated cash balance - Distribution. Any unobligated cash balance not exceeding ten thousand dollars must be held in a separate fund by the auditor of the county having the greatest share of the dissolved school district's land. The county auditor shall hold the fund for one year after the effective date of the dissolution. During that year, the county auditor shall accept assets and pay unresolved debts attributable to the dissolved school district. After one year the county auditor shall distribute the remaining cash balance among the school districts to which the real property of the dissolved district was attached. Unless otherwise directed by the order of dissolution, the distribution to each shall be the same percentage as the taxable valuation at the time of the attachment order.

15.1-12-29. Dissolution of school district - Unobligated cash balance - Tax credits or refunds.

1. Any unobligated cash balance in excess of ten thousand dollars is a credit for real property owners within the boundaries of the dissolved school district against taxes levied by the district in which their property is now situated. The county auditor shall base the credit on the five-year average of the total mills levied for education by the dissolved district. If property from the dissolved district is attached to more than one school district, the credit that eligible real property owners receive must be the same percentage of the unobligated cash balance as the taxable

valuation of the individual's property bears to the total taxable valuation of the dissolved district's property at the time of the attachment order.

2. Upon approval of the board of county commissioners, any school district required to provide a tax credit under subsection 1 may provide a cash refund in lieu of the tax credit. At the request of the county auditor, the school district holding the unobligated cash balance shall pay to the county treasurer the amount to be paid to those who own real property within the dissolved district. The treasurer shall issue the refund to the owner of the property as shown on the county's assessment list at the time of payment. If there is a lien for unpaid taxes against the property, the treasurer shall first apply the property owner's tax credit toward any outstanding balance. Any amount remaining may then be paid to the property owner. The cash refunds must be calculated proportionately to the total taxable value of the dissolved district during the last year taxes were levied.

¹⁶² **SECTION 13.** Chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

15.1-19-01. Legal surname - Use. Personnel in a public school district, a nonpublic school, a preschool program, and a child care facility shall use a student's legal surname for registration, for the maintenance of all records regarding the student, and in all communications requiring the use of a surname.

15.1-19-02. Corporal punishment - Prohibition.

1. A school district employee may not inflict, cause to be inflicted, or threaten to inflict corporal punishment on a student.
2. This section does not prohibit a school district employee from using the degree of force necessary:
 - a. To quell a physical disturbance that threatens physical injury to an individual or damage to property;
 - b. To quell a verbal disturbance;
 - c. For self-defense;
 - d. For the preservation of order; or
 - e. To obtain possession of a weapon or other dangerous object within the control of a student.
3. For purposes of this section, corporal punishment means the willful infliction of physical pain on a student; willfully causing the infliction of physical pain on a student; or willfully allowing the infliction of physical pain on a student. Physical pain or discomfort caused by athletic

¹⁶² Section 15.1-19-11 was amended by section 2 of House Bill No. 1349, chapter 189.

competition or other recreational activities voluntarily engaged in by a student is not corporal punishment.

4. The board of each school district shall develop policies setting forth standards for student behavior and procedures to be followed if the standards are not met.

15.1-19-03. Period of silence. A classroom teacher may require that the students observe a period of silence for meditation or prayer for up to one minute at the beginning of each schoolday. A school board may require that students observe a period of silence for up to one minute at the beginning of each schoolday.

15.1-19-04. Religious instruction - Excuse of student. At the request of a student's parent or guardian, the student's school principal shall permit a student to be excused for up to one hour each week in order to obtain religious instruction.

15.1-19-05. Birth control device - Distribution - Restriction. No person while acting in an official capacity as an employee or agent of a school district may distribute a birth control device 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.

15.1-19-06. Abortion referrals. No person while acting in an official capacity as an employee or agent of a 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.

15.1-19-07. Communicable parasites - Detection and eradication. The board of a school district may contract with licensed health care personnel to assist in the detection and eradication of communicable parasites.

15.1-19-08. Homeless child - Education.

1. A homeless child is entitled to a free public school education, in the same manner as that provided to other public school students, in accordance with the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77; 101 Stat. 525; 42 U.S.C. 11431 et seq.].
2. A school district shall allow a nonresident homeless child to attend school.
3. For the purposes of this section, "homeless child" means a homeless individual as described in the Stewart B. McKinney Homeless Assistance Act [Pub. L. 100-77, section 103(a); 101 Stat. 485; 42 U.S.C. 11302] and as defined in rules adopted by the superintendent of public instruction.
4. The superintendent of public instruction shall adopt rules to implement this section. The rules must provide for the educational placement of homeless children according to the child's best interest.

15.1-19-09. Students - Suspension and expulsion - Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules must provide for a procedural due process hearing that allows a student's parent or representative to participate in the hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy; provided the expulsion does not last beyond the termination of the current school year.

15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

1. The board of each school district shall adopt a policy governing the possession of weapons on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The weapons policy must prohibit the possession of a firearm by a student on school property and at school functions and provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion for at least one year. The policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board shall take testimony and consider evidence, including the existence of mitigating circumstances.
3. If a board expels a student under this section, the board may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.

6. For purposes of this section:
 - a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
 - b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

15.1-19-11. School safety patrols - Establishment - Adoption of rules. The board of a school district or the governing body of a nonpublic school may authorize a school principal or administrator to establish a safety patrol and to appoint students to the safety patrol. Any student age eleven or older is eligible for appointment to a safety patrol, provided the student's parent has filed written permission with the school principal or administrator. The superintendent of public instruction shall adopt rules to guide safety patrol members in the conduct of their duties and shall specify the identification to be worn and the signals to be used by safety patrol members while on duty.

15.1-19-12. School safety patrols - Immunity from liability. The superintendent of public instruction, schools, school boards and individual school board members, governing boards and individual governing board members, administrators, principals, teachers, safety patrol members whether students or adults, and parents of safety patrol student members are immune from any liability that might otherwise be incurred as a result of an injury to a safety patrol member or as a result of an injury caused by an act or omission on the part of a safety patrol member while on duty, provided that the persons substantially complied with the rules to guide safety patrol members, as adopted by the superintendent of public instruction.

SECTION 14. Chapter 15.1-24 of the North Dakota Century Code is created and enacted as follows:

15.1-24-01. Chemical abuse prevention program - Rules.

1. The superintendent of public instruction shall adopt rules regarding the implementation of chemical abuse prevention programs in this state's schools. The rules may include:
 - a. Community involvement through a citizens' advisory committee.
 - b. An assessment of services and resources available locally.
 - c. An assessment of student and staff needs.
 - d. The coordination of activities with public and private entities.
 - e. The development of an implementation plan.
 - f. An evaluation mechanism.
 - g. The development of a budget to fund the program.
2. If funds are appropriated or otherwise become available, the superintendent shall call for and review school district applications for

development of a program. School districts may apply for funds independently or jointly. The superintendent shall award the funds according to the merit of each application.

3. The superintendent shall develop a plan for the coordination of services with other agencies, including the department of human services, the state department of health, the department of transportation, and law enforcement agencies.

15.1-24-02. Staff. The superintendent of public instruction may employ an individual as a chemical abuse project coordinator. The coordinator shall:

1. Develop rules, in consultation with other private and public entities.
2. Disseminate rules developed under this chapter.
3. Provide communities, through their schools, with technical assistance in the planning and implementation of a chemical abuse and prevention program.
4. Collect data for reporting and program evaluation purposes.
5. Facilitate coordination of this program with prevention and educational programs conducted by other state agencies.
6. Provide the superintendent of public instruction with a written program evaluation.
7. Serve as a resource specialist to schools regarding the development and implementation of chemical abuse prevention programs.

15.1-24-03. Chemical abuse preassessment team - Building level support team.

Any school may appoint a chemical abuse preassessment team consisting of a school counselor, a social worker, and other appropriately trained individuals or a school may use a building support team to carry out chemical abuse prevention services under this chapter. The team shall review and act upon law enforcement reports of chemical abuse violations by students. Within fourteen days of receiving a report, the team shall determine whether to provide to the student, or if the student is a minor to the student's parent or guardian, information regarding chemical abuse and school and community services available to assist individuals who engage in chemical abuse.

15.1-24-04. Treatment or assistance records - Confidential. Any record of a student's medical treatment, use of a chemical abuse assistance program, or other individual record generated under this chapter, is confidential. It is not part of the student's educational record and may not be released without the written consent of the student, or if the student is less than age fourteen, without the written consent of the student's parent.

15.1-24-05. Law enforcement agencies - Duty to inform team.

1. A law enforcement agency shall notify a school principal in writing if the agency has probable cause to believe that a student enrolled in the school has violated section 5-01-08, 19-03.1-23, 39-08-01, or 39-08-18. The law enforcement agency shall provide the notice within two weeks of an incident.

2. The principal shall forward the notice to the school's chemical abuse preassessment team or support team referenced in section 15.1-25-03.
3. Subsection 1 does not apply if, in the opinion of the law enforcement agency, providing the notice would jeopardize the conclusion of a criminal investigation.

15.1-24-06. Report of chemical abuse - Immunity from liability. Any individual, other than the alleged violator, who in good faith reports or furnishes information regarding another's alleged chemical abuse to the chemical abuse preassessment team or the support team referenced in section 15.1-24-03, is immune from any liability, civil or criminal, that might otherwise result from the report. For the purpose of any proceeding, the good faith of a person reporting or furnishing information is presumed.

SECTION 15. Chapter 15.1-25 of the North Dakota Century Code is created and enacted as follows:

15.1-25-01. Postsecondary enrollment options program. Any North Dakota student enrolled in grade eleven or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of an academic course offered by any postsecondary institution accredited by a regional accrediting organization or a vocational course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education.

15.1-25-02. Permission to enroll - Notification - Credits. Before enrolling in a course for credit under this chapter, the student must obtain written permission from the student's school district superintendent. The student's school district superintendent shall determine the number of credits for which the student is eligible and shall include the number of credits on the document granting permission required by this section. For purposes of determining credit, a three-semester-hour course offered by a postsecondary institution is equivalent to a full semester high school course. Upon the student's successful completion of the course, the postsecondary institution shall notify the student's school district superintendent of that fact.

15.1-25-03. Costs of attendance - Responsibility of student. The student and the student's parent or legal guardian are responsible for all costs of attendance at a postsecondary institution under this chapter. For purposes of this section, "costs" includes tuition, fees, textbooks, materials, equipment, and other necessary charges related to the course in which the student has enrolled.

15.1-25-04. Transportation - Responsibility of student. The student and the student's parent or legal guardian are responsible for transportation arrangements and all costs of transportation associated with a student's attendance at a postsecondary institution under this chapter.

15.1-25-05. Per student payments - Extracurricular activities. A student attending a postsecondary institution under this chapter is deemed to be in attendance at the student's school district of residence for purposes of calculating per student payments and for purposes relating to the student's eligibility to participate in high school extracurricular activities.

15.1-25-06. Courses - Statutory and regulatory exemption. The courses for which dual high school and postsecondary credit are available under this chapter are

postsecondary courses and are exempt from any statutory or regulatory provisions otherwise applicable to high school courses and to the individuals by whom high school courses are taught.

SECTION 16. Chapter 15.1-26 of the North Dakota Century Code is created and enacted as follows:

15.1-26-01. Definitions - Adult and adult basic and secondary education. For purposes of this chapter, unless the context otherwise requires:

1. "Adult" means any individual who is beyond the age of compulsory school attendance.
2. "Adult basic and secondary education" means:
 - a. Instructional services for adults who:
 - (1) Do not have the basic literacy skills necessary to function effectively in society;
 - (2) Do not have a certificate of graduation from a school providing secondary education; or
 - (3) Have not reached a level of education equivalent to that required for a certificate of graduation to be issued.
 - b. Education for adults whose inability to speak, read, or write English is a substantial impairment of their ability to obtain or retain employment commensurate with their ability.

15.1-26-02. Adult basic and secondary education programs - Coordination. The superintendent of public instruction shall coordinate adult basic and secondary education programs and shall administer state and federal funding for the programs.

15.1-26-03. Adult basic and secondary education programs - Availability. The board of a school district may make adult basic and secondary education programs available to any individual over sixteen years of age who is unable to attend the public schools of the district.

15.1-26-04. Funding for adult basic and secondary education programs. The board of a school district may use school district funds to aid and promote adult basic and secondary education programs and may charge a reasonable fee for enrollment in such programs.

15.1-26-05. General equivalency diplomas - Copies. The superintendent of public instruction may charge up to three dollars for each general equivalency diploma issued, up to ten dollars for each copy of a general equivalency diploma, and up to two dollars for each copy of a transcript belonging to an individual pursuing a general equivalency diploma. The superintendent shall forward any money generated under this section to the state treasurer for deposit in the revolving printing fund in the state treasury and may expend the money to cover costs associated with the administration of the general equivalency diploma program.

15.1-26-06. General educational development test results - Confidentiality. The results of general educational development tests maintained by the superintendent of public instruction are confidential and are not open for public

inspection. This section does not prohibit the superintendent of public instruction from making an individual's test results available at the written request of the individual.

15.1-26-07. Adult basic and secondary education fund - Continuing appropriation. The superintendent of public instruction may receive and accept money from any public or private source for adult basic and secondary education programs. Any money received for adult basic and secondary education programs but not specifically appropriated by the legislative assembly must be deposited in the adult basic and secondary education fund in the state treasury. All money in the fund, and any interest upon moneys in the fund, is appropriated to the superintendent of public instruction for the purpose of administering and implementing adult basic and secondary education programs. Any funds appropriated under this section are not subject to section 54-44.1-11.

SECTION 17. REPEAL. Chapters 15-21, 15-21.2, 15-22, 15-27.1, 15-27.2, 15-27.3, 15-27.4, 15-27.5, 15-27.6, 15-27.7, 15-28, 15-41.1, 15-46, 15-48, 15-49, 15-51, 15-64, 15-65, sections 15-21.1-01, 15-21.1-02, 15-21.1-05, 15-21.1-06, 15-21.1-07, 15-21.1-09, 15-29-01, 15-29-01.1, 15-29-03, 15-29-03.1, 15-29-04, 15-29-06, 15-29-07, 15-29-09, 15-29-10, 15-29-11, 15-29-13, 15-29-14, 15-34.2-12, 15-34.2-13, 15-34.2-14, 15-34.2-17, 15-34.2-18, 15-35-09, 15-35-11, 15-35-12, 15-35-14, 15-38-04.1, 15-38-06, 15-38-13, 15-38-13.1, 15-38-13.2, 15-41-01, 15-41-02, 15-41-03, 15-41-04, 15-41-05, 15-41-07, 15-41-08, 15-43-11.1, 15-43-11.2, 15-43-11.3, 15-43-11.4, 15-44-06, 15-44-09, 15-44-10, 15-44-11, 15-47-01.1, 15-47-02.1, 15-47-05, 15-47-07, 15-47-08, 15-47-09, 15-47-10, 15-47-11, 15-47-12, 15-47-13, 15-47-14, 15-47-16, 15-47-21, 15-47-22, 15-47-24, 15-47-29, 15-47-30.1, 15-47-31, 15-47-32, 15-47-33.1, 15-47-36, 15-47-37, 15-47-40, 15-47-40.1, 15-47-41, 15-47-43, 15-47-47, 15-47-48, 15-47-49, and 15-47-50 of the North Dakota Century Code and sections 15-21.1-03, 15-21.1-04, 15-29-02, 15-29-05, 15-29-08, 15-29-08.4, 15-35-01.2, 15-41-27, 15-47-01, 15-47-04, 15-47-06, 15-47-15, 15-47-25, 15-47-30, 15-47-33, 15-47-39, 15-47-44.1, 15-47-44.2, and 15-47-51 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved April 14, 1999

Filed April 15, 1999

CHAPTER 197

SENATE BILL NO. 2235

(Senators Freborg, W. Stenehjem)
(Representatives Aarsvold, Monson)

SCHOOL DISTRICT HEALTH PLANS

AN ACT to create and enact a new section to chapter 15-29 of the North Dakota Century Code, or in the alternative to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to school district employees' group health plans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1034 does not become effective, a new section to chapter 15-29 of the North Dakota Century Code is created and enacted as follows:

School district employees' group health plans. In contracting for a school district employees' group health plan, the board of a school district shall meet the bidding requirements of section 15-47-15. No contract for a school district employees' health plan may be of a duration greater than six years.

SECTION 2. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

School district employees' group health plans. In contracting for a school district employees' group health plan, the board of a school district shall meet the bidding requirements of section 15.1-09-34. No contract for a school district employees' health plan may be of a duration greater than six years.

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

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 198

SENATE BILL NO. 2068

(Senators Wardner, Robinson)
(Representatives Devlin, Haas, Metcalf)

SCHOOL DISTRICT TECHNOLOGY CONSORTIA BORROWING

AN ACT to create and enact a new section to chapter 15-29 of the North Dakota Century Code, and in the alternative to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to the borrowing of money by school district technology consortia; to provide for a contingent expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-29 of the North Dakota Century Code is created and enacted as follows:

School district technology consortium - Authority to borrow money.

1. A school district technology consortium formed under chapter 54-40.3 may borrow money for instructional technology acquisition provided:
 - a. The outstanding principal borrowed by a consortium under this section does not exceed one hundred seventy-five thousand dollars;
 - b. The loan repayment period does not exceed ten years;
 - c. The loan is approved in writing by the board of each school district participating in the consortium;
 - d. The loan is:
 - (1) Approved by a majority of the eligible electors residing in each school district participating in the consortium, as evidenced by their signatures on a petition clearly stating the purpose of the loan, the amount of the loan, and its terms of repayment, and filed with the superintendent of public instruction; or
 - (2) Approved by a majority of each participating school district's electors voting on the question at a regular school district election or at a special election called by the board; and
 - e. The loan is approved by the superintendent of public instruction.
2. The superintendent of public instruction shall adopt rules setting forth the criteria for loan approval. The superintendent of public instruction may not approve a loan under this section if the superintendent determines that the instructional technology acquisition is not compatible with the statewide information technology plan.

SECTION 2. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

School district technology consortium - Authority to borrow money.

1. A school district technology consortium formed under chapter 54-40.3 may borrow money for instructional technology acquisition provided:
 - a. The outstanding principal borrowed by a consortium under this section does not exceed one hundred seventy-five thousand dollars;
 - b. The loan repayment period does not exceed ten years;
 - c. The loan is approved in writing by the board of each school district participating in the consortium;
 - d. The loan is:
 - (1) Approved by a majority of the eligible electors residing in each school district participating in the consortium, as evidenced by their signatures on a petition clearly stating the purpose of the loan, the amount of the loan, and its terms of repayment, and filed with the superintendent of public instruction; or
 - (2) Approved by a majority of each participating school district's electors voting on the question at a regular school district election or at a special election called by the board; and
 - e. The loan is approved by the superintendent of public instruction.
2. The superintendent of public instruction shall adopt rules setting forth the criteria for loan approval. The superintendent of public instruction may not approve a loan under this section if the superintendent determines that the instructional technology acquisition is not compatible with the statewide information technology plan.

SECTION 3. CONTINGENT EXPIRATION DATE. Section 1 of this Act is effective through the date on which House Bill No. 1034 as approved by the fifty-sixth legislative assembly becomes effective, and after that date is ineffective.

SECTION 4. EMERGENCY. Section 1 of this Act is declared to be an emergency measure.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 199

SENATE BILL NO. 2441

(Senator Freborg)

(Approved by the Delayed Bills Committee)

SCHOOL DISTRICT REORGANIZATION BONUSES

AN ACT to provide for school district reorganization bonuses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Reorganization bonus - Eligibility - Distribution.

1. If a school district reorganizes with one or more contiguous school districts or portions of districts, the newly reorganized district is entitled to receive a reorganization bonus, provided at least one of the reorganizing districts is a high school district and that the newly reorganized district consists of at least eight hundred square miles.
2. The total reorganization bonus to which a newly reorganized district is eligible consists of:
 - a. Fifty thousand dollars per one hundred square mile block, or a major portion thereof, included within the reorganized district and calculated by determining the lesser of the total square mileage of the reorganized district or one thousand four hundred square miles, and subtracting from that amount the square mileage of the largest district or portion of a district involved in the reorganization;
 - b. One thousand dollars per student calculated by determining the lesser of the total fall enrollment of the newly reorganized district or seven hundred fifty and subtracting from that amount the fall enrollment in the district or portion of the district that had the largest student population of those districts or portions of districts participating in the reorganization during the school year immediately preceding the effective date of the reorganization; and
 - c. Fifty thousand dollars for each whole school district that formed the reorganized district.
3. The superintendent of public instruction shall distribute the reorganization bonus to each eligible reorganized district during the month of December, following the effective date of the district's reorganization.

SECTION 2. Reorganization bonus - Distribution - Limitation. For purposes of distributing reorganization bonuses, the superintendent of public instruction shall determine the eligibility of reorganized districts chronologically, according to the date on which each district's reorganization plan was approved by the state board of public school education. After all other statutory obligations have been met within the limits of legislative appropriations, the superintendent of public instruction shall make the distribution of reorganization bonuses from funds made available in the grants - foundation aid and transportation line item in Senate Bill No. 2013, as approved by the fifty-sixth legislative assembly, for the 1999-2001 biennium, provided the superintendent may not expend more than two million dollars during the 1999-2001 biennium for the purpose of this Act. No reorganization bonus payable under this Act may exceed five hundred thousand dollars. A reorganized district that receives a reorganization bonus under this Act is not eligible to receive additional reorganization bonuses based on future reorganization efforts for a period of ten years.

Approved April 19, 1999
Filed April 19, 1999

ELECTIONS

CHAPTER 200

HOUSE BILL NO. 1149

(Political Subdivisions Committee)
(At the request of the Secretary of State)

VOTING AND ABSENTEE BALLOTS

AN ACT to amend and reenact sections 16.1-01-05, 16.1-05-06, 16.1-07-08, 44-02-01, and 58-04-09 of the North Dakota Century Code, relating to voting by an elector moving from one precinct to another, procedures for challenging voters and voters who apply for absent voter's ballots, and when vacancies in office occur.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-05. Voting by qualified elector moving from one precinct to another.
~~Where~~ If a qualified elector moves from one precinct to another precinct within this state, the ~~person~~ elector is entitled to vote in the precinct from which the ~~person~~ elector moved until the ~~person~~ elector has established a new ~~voting~~ residence pursuant to section 16.1-01-04.

SECTION 2. AMENDMENT. Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-06. Challenging right of person to vote - Affidavit required - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger from each political party is entitled to be in attendance at each polling place at any one time.
2. The members of the election board and poll challengers may challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector. Members of the election board or poll challengers may challenge a voter if they know or have reason to believe any of the following:
 - a. The person offering to vote does not meet the age or citizenship requirements.
 - b. The person offering to vote has never voted in the precinct before and fails to provide reasonable evidence of residency in the precinct.

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. No person may receive compensation, including money, goods, or services, for acting as an agent for an elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed statement in substantially the following form:

Precinct _____

Name _____

Residential Address _____

City _____ ND Zip Code _____

Under penalty of possible criminal prosecution for making a false statement, I swear that ~~the above residential address is my address for voting purposes~~ I reside at the residential address provided above, that I have resided in my precinct for at least thirty days, and this is the only ballot I will cast in this election.

Applicant's Signature _____

Date _____

If the absent voter is unable to sign the voter's name, the voter shall mark (X) that statement in the presence of a disinterested person. The disinterested person shall print the name of the person marking the X below the X and shall sign that person's own name following the printed name with the notation "witness to the mark".

3. The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an

explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.

¹⁶³ **SECTION 4. AMENDMENT.** Section 44-02-01 of the North Dakota Century Code is amended and reenacted as follows:

44-02-01. Vacancies - Causes thereof. An office becomes vacant if the incumbent shall:

1. Die in office;
2. Be adjudged mentally ill;
3. Resign from office;
4. Be removed from office;
5. Fail to discharge the duties of ~~his~~ office, when ~~such~~ the failure has continued for sixty consecutive days, except when prevented from discharging ~~such~~ the duties by reason of ~~his~~ the person's service in the armed forces of the United States, by sickness, or by other unavoidable cause; ~~provided, however, that.~~ However, as to any office which under the law the vacancy must be filled by the governor, the governor for good cause shown may extend the period, which the incumbent may be absent, for an additional period of sixty days. No remuneration on account of such office may be paid to an absentee officeholder during ~~his~~ that person's absence, and ~~such~~ the office in all cases becomes vacant upon the termination of the term for which ~~he~~ the person was elected or appointed;
6. Fail to qualify as provided by law;
7. Cease to be a resident of the state, district, county, or ~~township~~ other political subdivision in which the duties of the office are to be discharged, or for which ~~he~~ the person may have been elected;
8. Be convicted of a felony or any offense involving moral turpitude or a violation of ~~his~~ the person's official oath;
9. Cease to possess any of the qualifications of office prescribed by law; or
10. Have ~~his~~ the person's election or appointment declared void by a competent tribunal.

SECTION 5. AMENDMENT. Section 58-04-09 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶³ Section 44-02-01 was also amended by section 9 of House Bill No. 1181, chapter 208.

58-04-09. Challenge to voter - Duty of judges. If any person offering to vote at any election or upon any question arising at a township meeting is challenged as unqualified using the criteria provided in section 16.1-05-06, the judges shall proceed in the manner in which judges at a general election are required to proceed, adapting the affidavit described in section 16.1-05-06 to the circumstances of the township meeting.

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 201

HOUSE BILL NO. 1285

(Representatives Wikenheiser, Maragos, Nottestad)

PRECINCT COMMITTEEMEN ELECTION

AN ACT to amend and reenact subsection 3 of section 16.1-03-03 of the North Dakota Century Code, relating to political party election of precinct committeemen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or ~~major~~ fraction thereof, cast for the party's presidential electors in the precinct in the last presidential election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of the precinct in which the committeeman resides and must be elected for a two-year term.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 202

HOUSE BILL NO. 1284

(Representatives Wikenheiser, Maragos, Nottestad)

PARTY EXECUTIVE COMMITTEE MEMBERSHIP

AN ACT to amend and reenact section 16.1-03-07 of the North Dakota Century Code, relating to political party district executive committee membership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-07. Meeting of district committee - Organization.

1. In every odd-numbered year, the district committee of each party shall meet within fifteen days after the precinct caucus provided for in section 16.1-03-01. The day, hour, and site must be set by the existing district committee chairman. The precinct committeemen of a party, selected as provided by this chapter, with any other persons provided for by the district committee's bylaws and as the district committee designates, constitute the district committee of the party. The district committee of a party must be organized to coincide with the geographical boundary lines of state legislative districts. Each member of any committee provided for in this chapter must be a qualified elector and must retain the office the member was elected to until a successor is chosen. The district committee shall organize by:
 4. a. Selecting a chairman, vice chairman, secretary, and treasurer chosen by the district committee. The officers selected need not be precinct committeemen; however, all the officers must be voting members of the district committee.
 2. b. Adopting rules and modes of procedure not in conflict with law.
 3. c. Filling any vacancies in the office of precinct committeeman pursuant to section 16.1-03-05.
 4. d. Selecting an executive committee consisting of ~~from five to eighteen~~ or more persons chosen from the district committee. The chairman, vice chairman, treasurer, and secretary of the district committee must be members and the officers of the executive committee. That party's nominees for and members of the legislative assembly may also be members of the executive committee. ~~The five to eighteen person membership limitation includes the officers of the executive committee and that party's nominees for and members of the legislative assembly.~~

2. The newly elected chairman shall notify the secretary of state of the names of the party officers selected. The secretary of state shall certify the names of the party officers to the county auditors. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever occurs first. The secretary of state must be notified of any changes in membership of the district's committee officers by the district committee and must notify the county auditors of any changes.

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 203

SENATE BILL NO. 2232

(Senators B. Stenehjem, Kringstad, Thompson)
(Representatives Carlisle, Hoffner, Cleary)

BOARD OF ELECTION MEMBER QUALIFICATIONS

AN ACT to amend and reenact subsection 1 of section 16.1-05-02 of the North Dakota Century Code, relating to the qualifications of members of the board of election.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 16.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

1. a. ~~Every~~ Except as provided in subdivisions b and d, every member of the election board and each poll clerk must be a qualified elector of the precinct in which the person is assigned to work and must be eligible to vote at the polling place to which the person is assigned unless the county auditor has exhausted all means to appoint election judges and clerks from within the voting precinct under subsection 2 of section 16.1-05-01.
- b. A student enrolled in a high school or college in this state who has attained the age of sixteen is eligible to be appointed as a poll clerk if the student possesses the following qualifications:
 - (1) Is a United States citizen or will be a citizen at the time of the election at which the student will be serving as a member of an election board;
 - (2) Is a resident of this state and has resided in the precinct at least thirty days before the election; and
 - (3) Is a student in good standing attending a secondary or higher education institution.
- c. A student appointed as a poll clerk may be excused from school attendance during the hours that the student is serving as a poll clerk, including training sessions, if the student submits a written request to be absent from school signed and approved by the student's parent or guardian and by the school administrator and a certification from the district party chairman or county auditor stating the hours during which the student will serve. A student excused from school attendance under this subdivision may not be recorded as being absent on any date for which the excuse is operative. No more than two students may serve as poll clerks on an election board.

- d. An individual who has attained the age of sixteen and has graduated from high school or obtained a general education degree from an accredited educational institution is eligible to be appointed as a poll clerk if the individual meets the qualifications of paragraphs 1 and 2 of subdivision b.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 204

SENATE BILL NO. 2148

(Judiciary Committee)

(At the request of the Secretary of State)

POLITICAL COMMITTEE REPORTING AND ELECTIONS

AN ACT to create and enact a new section to chapter 16.1-08.1 and a new section to chapter 16.1-11 of the North Dakota Century Code, relating to reporting requirements for political committees that organize and register according to federal law and deadlines for placing county and city measures on election ballots; and to amend and reenact sections 11-07-06, 16.1-05-03, 16.1-08.1-01, 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.2, subsection 3 of section 16.1-08.1-03.3, sections 16.1-08.1-06, 16.1-11-06, 16.1-11-11, 16.1-11-22, subsection 3 of section 16.1-13-22, sections 16.1-15-01, 16.1-15-19, and subsection 6 of section 16.1-16-01, relating to election of county commissioners, election worker training sessions, campaign contribution statements, the time for submitting nominating petitions or certificates of endorsement, the primary election ballot, and county canvassing boards and recount boards being authorized to stamp and initial absentee ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-07-06 of the North Dakota Century Code is amended and reenacted as follows:

11-07-06. Petitions - Signers required - Submission of question to voters. The board of county commissioners, upon receipt of a petition signed by at least ten percent of the qualified electors of the county as determined by the number of votes cast for the office of governor at the preceding general election, shall, in accordance with applicable provisions of title ~~46~~ 16.1, cause the question of whether commissioners shall be elected at large to be submitted to the qualified electors of the county at the next succeeding primary or general election. If approved by sixty percent of the qualified electors voting at such election, all county commissioner districts in ~~such~~ the county ~~shall~~ must be immediately dissolved, and thereafter as the term of office of each member of the board of county commissioners expires, ~~such~~ the office ~~shall~~ must be filled by an election at large.

SECTION 2. 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 the manuals to each member of all the election boards in the county.

2. Before each primary and general election, each county auditor or the auditor's designated representative shall conduct training sessions on election laws and election procedures for election officials in the county and may conduct training sessions 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 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~~ the course or courses, the county auditor may deliver to all election inspectors at ~~such the~~ meeting the official ballots 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 excused from attending a third training session on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding a special 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.

¹⁶⁴ **SECTION 3. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise ~~plainly~~ requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.

2. "Candidate" means an individual who seeks nomination for election or election to public office.

¹⁶⁴ Section 16.1-08.1-01 was also amended by section 35 of House Bill No. 1045, chapter 50.

3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. ~~Contribution~~ The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes; ~~and~~. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source except as provided in subdivision d. ~~This definition~~ The term does not include:
 - a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on the candidate's own behalf.
 - d. Any money received ~~from a district or state committee of a political party, as established pursuant to sections 16.1-03-06 and 16.1-03-08, except for contributions reported pursuant to section 16.1-08.1-03~~ by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code.
5. "Expenditure" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or property, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
7. "Person" means an individual, partnership, committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures primarily for political purposes.
9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be

filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.

10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person. The term does not include activities undertaken in the performance of a duty of a state office.
11. "Public office" means every statewide or legislative office to which persons can be elected by vote of the people under the laws of this state.

SECTION 4. AMENDMENT. Section 16.1-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02. Contributions statement required of candidates.

1. Any candidate who is soliciting or accepting contributions for any political purpose shall make and file a statement in accordance with this section.
2. The candidate shall include in the statement the name and mailing address of all contributors who contributed in excess of ~~one~~ two hundred dollars in the aggregate during the reporting period to the candidate, the amount of each reportable contribution, and the date each reportable contribution was received.
3. The candidate shall file the statement in the office of the secretary of state no later than the twelfth day before the date of the 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 twentieth day before the date of the election. The candidate shall file a complete statement for the entire calendar year no later than the thirty-first day of January of the following 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.

~~Statements of a legislative candidate must be filed in the office of the county auditor of the candidate's county of residence. Statements of state office candidates must be filed in the office of the secretary of state.~~

4. Even if the candidate has not received any contributions in excess of ~~one~~ two hundred dollars during the ~~calendar year reporting period~~, the candidate shall file a statement as required by this chapter.

SECTION 5. 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.

1. Any political party that receives contributions in excess of ~~one~~ two hundred dollars in the aggregate during the reporting period shall file a statement containing a detailed list of all contributions received from a person or political committee which exceed ~~one~~ two hundred dollars in

amount. The statement must include the name and mailing address of all contributors listed, the amount of each reportable contribution, and the date each reportable contribution was received.

2. A yearend statement covering the entire calendar year must be filed with the secretary of state no later than the thirty-first day of January of the following year. A preelection statement must be filed no later than the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete from the beginning of that calendar year through the twentieth day before the election.
3. Even if the political party has not received any contributions in excess of two hundred dollars during the reporting period, the political party shall file a statement as required by this chapter.

SECTION 6. AMENDMENT. Section 16.1-08.1-03.2 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.2. Political committee registration. A political committee, other than a political party and a committee organized in support of a legislative candidate, and a person aiding or opposing 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 calendar year in which it receives any contribution. The registration must be completed within five days of the receipt of any contribution and must be submitted with a registration fee of five dollars. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office in this state is not required to register as a political committee according to this section if the political committee reports according to section 8 of this Act.

SECTION 7. AMENDMENT. Subsection 3 of section 16.1-08.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

3. All political committees formed for the purpose of administering the segregated fund provided for in this section shall file a statement showing the name and mailing address of each contributor of an amount in excess of two hundred dollars in the aggregate for the reporting period and a listing of all expenditures of an amount in excess of ~~one~~ two hundred dollars in the aggregate made for political purposes with the secretary of state. The statement must include the amount of each reportable contribution and the date it was received and the amount of each reportable expenditure and the date it was made. A yearend statement covering the entire calendar year must be filed no later than the thirty-first day of the following year. A preelection statement must be filed no later than the twelfth day before any primary, special, or general election and must be complete from the beginning of the calendar year through the twentieth day before the election.

SECTION 8. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Political committees that organize and register according to federal law that make disbursements to nonfederal candidates. A political committee that organizes and registers according to federal law and makes a disbursement in excess of two hundred dollars to a nonfederal candidate seeking public office in this state shall file a copy of that portion of the committee's federal report detailing the disbursement

made to the candidate. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; and
3. The date and amount of the disbursement made.

SECTION 9. AMENDMENT. Section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06. Contributions statement requirements.

1. A statement required by this chapter to be filed with the secretary of state ~~or county auditor~~ must be:
 - 4- a. Deemed properly filed when deposited in an established post office within the prescribed time, postage affixed, and directed to the secretary of state ~~or county auditor~~, but if it is not received, a duplicate of the statement must be promptly filed upon notice by the secretary of state ~~or county auditor~~ of its nonreceipt.
 - 2- b. Preserved by the secretary of state ~~or county auditor~~ for a period of four years from the date of filing. The statement is to be considered a part of the public records of the secretary of state's ~~or county auditor's~~ office and must be open to public inspection.
2. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state ~~or county auditor~~ is closed, the statement must be filed on the next available day on which the office of the secretary of state ~~or county auditor~~ is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated to report an overall total contribution for the purposes of the statements required by this chapter. Aggregate contributions must reference the date of the most recent contribution. Contributions made separately by different persons from joint accounts are considered separate contributions for reporting purposes.

SECTION 10. A new section to chapter 16.1-11 of the North Dakota Century Code is created and enacted as follows:

Deadline for placing county and city measures on primary, general, or special election ballots. Notwithstanding any other provision of law, a county may not submit a measure for consideration of the voters at a primary, general, or special statewide, district, or county election after four p.m. on the sixtieth day before the election. A city that has combined its regular or a special election with a primary, general, or special county election, according to the provisions set forth in section 40-21-02, may not submit a measure for consideration of the voters at that election after four p.m. on the sixtieth day before the election.

SECTION 11. AMENDMENT. Section 16.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-06. State candidate's petition or political party certificate of endorsement required to get name on ballot - Contents - Filing. Every candidate for United States senator, United States representative, a state office except the office of state senator or state representative, and judges of the supreme and district courts shall, ~~not more than seventy nor less than sixty days~~, between the first date candidates may begin circulating nominating petitions according to this chapter and before four p.m. of the sixtieth day, prior to any primary election, present to the secretary of state either:

1. A certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, the title of the office to which the candidate aspires, and the party which 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 the candidate aspires.
 - b. The name of the party the candidate represents if the petition is for an office under party designation.
 - c. The signatures of qualified electors, the number of which must be determined as follows:
 - (1) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates for the same position at the last general election. However, no more than three hundred signatures may be required.
 - (2) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
 - (3) If the office is under the no-party designation, at least three hundred signatures.
 - d. The mailing address and the date of signing for each signer.

If the petition or certificate of endorsement is for the office of governor or lieutenant governor, it must contain the names and other information required of candidates for both those offices. If the petition or certificate of endorsement is mailed, it must be in the possession of the secretary of state before four p.m. of the sixtieth day prior to the primary election.

SECTION 12. 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~~ between the first date candidates may begin circulating nominating petitions according to this chapter and before four p.m. of the sixtieth day before any primary election, to the county auditor of the county in which 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 the candidate aspires, and the party 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 the candidate aspires.
 - b. The name of the party the candidate represents, only if it is a petition for an office 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 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 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 a county office and no candidate was elected or no votes were cast for 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. 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.
 - (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 before the primary election.

SECTION 13. 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".
2. Each party or principle having candidates at the primary election 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 cast votes in more than one party column and vote for candidates of more than one party, your party 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)."
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 must have the left-hand column, and the party or principle casting the next largest vote 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 the voter votes for candidates of more than one party the voter's party ballot will be rejected.

SECTION 14. AMENDMENT. Subsection 3 of section 16.1-13-22 of the North Dakota Century Code is amended and reenacted as follows:

3. At primary elections, the inspector or judge shall also inform each elector that if the elector splits the party ballot or votes for candidates of more than one party the elector's party ballot will be rejected.

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

16.1-15-01. Ballots void and not counted - Part of ballot may be counted.

1. In the canvass of the votes at any election, a ballot is void and may not be counted if:

4. a. It is not endorsed with the official stamp and initials as provided in this title; or
2. b. It is impossible to determine the elector's choice from the ballot or parts of a ballot.
2. If a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If an elector votes for more than the number of persons to be elected to any office, the elector's ballot may be invalidated only insofar as the elector's vote for such office is concerned, and the balance of the elector's ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a party ballot is void if the elector votes for candidates of more than one party.

SECTION 16. AMENDMENT. Section 16.1-15-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Votes from unestablished precincts disregarded. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to stamp and initial properly postmarked absentee ballots that were not considered or counted at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

SECTION 17. AMENDMENT. Subsection 6 of section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

6. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No person may serve on the recount board if the person would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. The recount board is authorized to stamp and initial properly postmarked absentee ballots that were not considered or counted at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is called, the county auditor or other political subdivision election official shall take appropriate steps to safeguard the ballots.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 205

HOUSE BILL NO. 1127

(Judiciary Committee)

(At the request of the Secretary of State)

ABSENTEE BALLOT PRECINCTS

AN ACT to amend and reenact section 16.1-07-12.1 of the North Dakota Century Code, relating to absentee ballot precincts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-12.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-12.1. Absentee ballot precinct - Election board appointment - Ballot counting.

1. For any primary, general, or special statewide ~~or legislative~~, district, or county election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, ~~for each legislative district in the county~~ for the purpose of counting all absentee ballots cast in an election in that ~~district county~~. ~~Each absentee ballot precinct is a separate precinct for the purpose of ballot arrangement rotation.~~ The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. ~~The governing body of the city shall appoint the election inspector in a district contained entirely within an incorporated city. The county auditor, with the approval of the board of county commissioners, shall appoint all other inspectors. Each district party chairman of the two parties which cast the largest and the next largest number of votes at the last general election shall appoint one election judge for each district. If the board of county commissioners chooses to establish an absentee ballot precinct according to this section, the following provisions apply:~~
 - a. The county auditor shall appoint the absentee ballot counting board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set forth in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - ~~3.~~ b. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
 - ~~4.~~ c. ~~The~~ On the day of the election, the absentee ballot counting board shall occupy a room location designated by the county auditor which must be open to any person for the purpose of observing the counting process.

5. d. The absentee ballots must be opened and handled as required in section 16.1-07-12. The absentee ballot counting board may commence counting the absentee ballots at the same time as any precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 206

HOUSE BILL NO. 1211

(Representative Winrich)

(Senator DeMers)

CERTIFICATE OF CANDIDACY FILING

AN ACT to amend and reenact section 16.1-09-02 and subsection 4 of section 16.1-12-02.2 of the North Dakota Century Code, relating to the filing of certificates of candidacy by write-in candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-09-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-09-02. Statement of interests to be filed. Every candidate for elective office shall file a statement of interests as required by this chapter. In a year when a president and vice president of the United States are to be chosen, presidential and vice presidential candidates shall file with the secretary of state either a statement of interests as required by this chapter or a copy of the personal disclosure statement that is required by the federal election commission. A candidate for elective office shall file the statement of interests with the officer with whom the candidate filed the candidate's certificate of nomination, certificate of endorsement, ~~or~~ petition of nomination, or certificate of write-in candidacy. Candidates for elective office who are required to file such statements shall do so at the time of filing a certificate of nomination, a certificate of endorsement, ~~or~~ a petition of nomination, or a certificate of write-in candidacy, pursuant to chapter 16.1-11, 16.1-12, or 40-21, as is appropriate; ~~provided, that any.~~ A person who has filed a statement as the result of candidacy in a primary election need not refile ~~prior to~~ before running in the following general election. A write-in candidate who is not required to file a certificate of write-in candidacy shall file the statement of interests after the candidate's election at the time of filing the required oath of office. Every person who is appointed by the governor to a state agency, board, bureau, commission, department, or occupational or professional licensing board shall file a statement of interests as required by this chapter with the secretary of state simultaneously with announcement of the appointment.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-12-02.2 of the North Dakota Century Code is amended and reenacted as follows:

4. A person who intends to be a write-in candidate for any legislative district office shall file a certificate of write-in candidacy with the election officer with whom the candidate would otherwise file to have the candidate's name placed on the ballot. The certificate must contain the name, address, and signature of the candidate. Certificates must be filed by four p.m. on the fourth day before the election. When the candidate files a certificate, the candidate also shall file the contribution statement provided for under section 16.1-08.1-02 complete through the day of the filing of the certificate.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 207

SENATE BILL NO. 2121

(Judiciary Committee)

(At the request of the Secretary of State)

PRESIDENTIAL PREFERENCE CONTEST

AN ACT to create and enact two new sections to chapter 16.1-11 of the North Dakota Century Code, relating to requirements for conducting a presidential preference contest and a presidential caucus; to amend and reenact section 16.1-11-02 and subdivision v of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to the time for holding presidential preference contests and the adoption of rules by the secretary of state; 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 16.1-11-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-02. Presidential preference contest - Time for holding. In a presidential election year after 2003, there must be conducted a presidential preference contest on the last Tuesday in February of that year. The presidential preference contest may be used only to instruct delegates to a national political convention and may not further the electoral process for any other purpose. No other election or vote on a measure of any kind may be held in conjunction with the presidential preference contest.

SECTION 2. A new section to chapter 16.1-11 of the North Dakota Century Code is created and enacted as follows:

Presidential preference contest - Rules. Notwithstanding any other provision of law, the secretary of state shall adopt rules relating to the presidential preference contest, including rules providing for the reduction of poll workers, the reduction of poll hours, the reduction of precincts, the arrangement of the names of candidates on the official ballot, the publication of the sample ballot, and open voting within cities or counties.

SECTION 3. A new section to chapter 16.1-11 of the North Dakota Century Code is created and enacted as follows:

2000 presidential caucus.

1. On one designated day between the last Tuesday in February and the first Tuesday in March in the year 2000, every political party entitled to a separate column under section 16.1-11-30 may conduct a presidential preference caucus. If employed by a political party, the results of a presidential preference caucus must be used to instruct delegates to a national political convention.
2. A presidential preference caucus must be conducted in the manner provided in chapter 16.1-03 with the exception that a political party is not required to hold individual caucuses in every election precinct

throughout a district. Only those persons who either voted or affiliated with the party at the last general election or intend to vote or affiliate with the party at the next general election may participate and vote at the presidential preference caucus.

3. Unless specifically forbidden by national party rules, the delegates selected by political parties at a presidential preference caucus are bound to cast their first ballots at the party national convention in such a manner that each candidate at the party's presidential preference caucus receives a proportion of the total votes cast by the delegates equal to the proportion received by that candidate of the total votes cast for all candidates for president of that party at the caucus. If party rules do not allow apportionment of a delegate and such an apportionment appears necessary because no candidate received more than five-tenths of a delegate, in computing the number of delegates to which a candidate is entitled on the first ballot that delegate must be assigned to the candidate receiving the highest number of votes in the contest. If a candidate withdraws before the first ballot voting begins, delegates obligated to vote for that candidate on the first ballot are released from that obligation.
4. A presidential preference contest, as provided for in chapter 16.1-11, may not be conducted in the year 2000 nor is a political party entitled to conduct a presidential preference contest in the year 2000. A political party must notify the secretary of state before August 1, 1999, if the political party will conduct a presidential preference caucus in the year 2000 according to this section.

¹⁶⁵ **SECTION 4. AMENDMENT.** Subdivision v of subsection 2 of section 28-32-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- v. The secretary of state with respect to rules adopted for the presidential preference contest under section ~~16.1-11-02.2~~ 2 of this Act.

SECTION 5. EFFECTIVE DATE. Sections 2 and 4 of this Act become effective on January 1, 2003.

SECTION 6. EXPIRATION DATE. Section 3 of this Act is effective through April 1, 2000, and after that date is ineffective.

Approved March 18, 1999
Filed March 19, 1999

¹⁶⁵ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2110, chapter 304.

CHAPTER 208

HOUSE BILL NO. 1181

(Political Subdivisions Committee)
(At the request of the Secretary of State)

POLITICAL SUBDIVISION OFFICER OATHS, NOMINATIONS, AND TERMS

AN ACT to amend and reenact sections 15-47-08, 16.1-11-16, 16.1-12-02, 40-08-06, 40-13-03, 40-21-02, 40-21-07, 44-01-04, and 44-02-01 of the North Dakota Century Code, relating to officers of political subdivisions taking oaths of office and failing to qualify for office, nominating petitions and procedures for circulating nominating petitions, filling unexpired terms on a city council by election, and appointing election workers in city elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-08 of the North Dakota Century Code is amended and reenacted as follows:

15-47-08. Oath of office of school district officers. Each person elected or appointed as a member of the school board or as a business manager of the school district, before entering upon the duties of his office, shall take and file with the business manager of the school district the oath prescribed for civil officers within ten days after notice of the person's election or appointment. Refusal to take the oath of office, as required by this section, must also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

SECTION 2. AMENDMENT. Section 16.1-11-16 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-16. Form of ~~petition~~ nominating petitions. ~~A petition required in this chapter may be one continuous list of names under the proper political title or principle or there may be a number of petitions using the same title, containing the aggregate of names required.~~

1. Each nominating petition circulated by candidates for any state, district, county, or other political subdivision office must include or have attached the following information, which must be made available to each signer at the time of signing:
 - a. The candidate's name, address, and the title of the office to which the candidate aspires, including the appropriate district number if applicable, or whether the petition is intended for an unexpired term of office.
 - b. The name of the party the candidate represents if the petition is for an office under party designation.
 - c. The date of the election at which the candidate is seeking nomination or election.

2. Only qualified electors of the state, district, county, or other political subdivision, as the case may be, may sign nominating petitions. In addition to signing the person's name, petition signers shall include the following information:
 - a. The date of signing.
 - b. Their complete residential address, rural route, or general delivery.
 - c. Either the North Dakota city or its corresponding zip code.
3. Incomplete signatures or accompanying information of petition signers which do not meet the requirements of this section invalidate such signatures. The use of ditto marks to indicate that the information contained on the previous signature line carries over does not invalidate a signature. Signatures that are not accompanied by a complete date are not invalid if the signatures are preceded and followed by a signature that is accompanied by a complete date.

SECTION 3. 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 that person's mailing address and the date of signing meet the specifications for nominating petitions set forth in section 16.1-11-16. The signatures on the petition must be in the following number:
 - a. 1. Except as provided in ~~subdivision e~~ subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
 - b. 2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
 - e. 3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.

5. 4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

¹⁶⁶ **SECTION 4. AMENDMENT.** Section 40-08-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-06. Term of office of council members - Staggered terms provided for in cities where other than ten council members elected. Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members must be arranged so that only one-half of the council members in any city are elected in any one election. When a city first adopts the council form of government, or when a city that has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the council members must be perfected as follows: of the council members elected in each ward, the one receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding the council member's election; if the city is not divided into wards, the one-half of the council members elected in the entire city receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one-half of the council members elected in the entire city receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding their election. ~~Whenever, for any cause, more than one-half of the total number of council members in any ward, or more than one-half of the total number of council members in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the council members elected at the election must be determined as provided in this section. Whenever, for any reason, vacancies exist on the council which require an unexpired term to be filled by election, the unexpired term must be designated on the ballot separate from any other regular term or terms that may also appear on the ballot. Candidates seeking nomination to an unexpired term are required to indicate whether or not they are seeking a regular term of office or an unexpired term of office on their nominating petitions as set forth in section 40-21-07.~~

SECTION 5. AMENDMENT. Section 40-13-03 of the North Dakota Century Code is amended and reenacted as follows:

40-13-03. Oaths of municipal officers. Every person elected or appointed to any municipal office, before ~~he~~ the person enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers, and, except in the case of the auditor, shall file the same with the city auditor within ten days after notice of ~~his~~ the election or appointment has been given. The oath of the city auditor shall be filed in the office of the auditor of the county in which the municipality is located. Refusal to take the oath of office, as required by this section, shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

¹⁶⁶ Section 40-08-06 was also amended by section 3 of House Bill No. 1025, chapter 289.

SECTION 6. AMENDMENT. Section 40-21-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at the election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. For city elections that are not held under an agreement with any county, the governing body of the city shall appoint one inspector; ~~two clerks~~, and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. In voting precincts in which over three hundred votes are cast in any previous election, two election clerks may be appointed by the governing body. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the publishing requirements of the county.

SECTION 7. AMENDMENT. Section 40-21-07 of the 1997 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 sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to 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.~~ Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not held in conjunction with ~~combined~~ combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election. Nominating petitions required by this section may not be circulated or signed more than ninety days before the date when nominating petitions must be filed pursuant to this section. Any signatures to a nominating petition obtained more than ninety days before that date may not be counted.

SECTION 8. AMENDMENT. Section 44-01-04 of the North Dakota Century Code is amended and reenacted as follows:

44-01-04. State, district, and county officers - Failure to qualify - Vacancy. If any person elected to any state, district, ~~or~~ county, or other political subdivision office fails to qualify and enter upon the duties of such office within the time fixed by law, such office must be deemed vacant and must be filled by appointment as provided by law. If there is a contest for such office or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties thereof, the time above prescribed does not govern and ~~he~~ the person must be allowed twenty days after the day such contest is determined or such obstruction removed in which to qualify.

¹⁶⁷ **SECTION 9. AMENDMENT.** Section 44-02-01 of the North Dakota Century Code is amended and reenacted as follows:

44-02-01. Vacancies - Causes thereof. An office becomes vacant if the incumbent shall:

1. Die in office;
2. Be adjudged mentally ill;
3. Resign from office;
4. Be removed from office;
5. Fail to discharge the duties of ~~his~~ office, when such failure has continued for sixty consecutive days, except when prevented from discharging such duties by reason of ~~his~~ service in the armed forces of the United States, by sickness, or by other unavoidable cause; provided, however, that as to any office which under the law the vacancy must be filled by the governor, the governor for good cause shown may extend the period, which the incumbent may be absent, for an additional period of sixty days. No remuneration on account of such office may be paid to an absentee officeholder during ~~his~~ the person's absence, and such office in all cases becomes vacant upon the termination of the term for which ~~he~~ the person was elected or appointed;
6. Fail to qualify as provided by law, which includes taking the designated oath of office prescribed by law;
7. Cease to be a resident of the state, district, county, or township in which the duties of the office are to be discharged, or for which ~~he~~ the person may have been elected;
8. Be convicted of a felony or any offense involving moral turpitude or a violation of ~~his~~ the officer's official oath;
9. Cease to possess any of the qualifications of office prescribed by law; or

¹⁶⁷ Section 44-02-01 was also amended by section 4 of House Bill No. 1149, chapter 200.

10. Have ~~his~~ the person's election or appointment declared void by a competent tribunal.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 209

HOUSE BILL NO. 1124

(Judiciary Committee)

(At the request of the Secretary of State)

BALLOTS

AN ACT to amend and reenact section 16.1-11-27 of the North Dakota Century Code, relating to name rotation on ballots; and to repeal section 16.1-11-28 of the North Dakota Century Code, relating to piling, cutting, and blocking ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-27 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-27. Arrangement of names on ballots ~~and voting machines.~~

4. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled.
2. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for must be alternated in the following manner:
 - a. 1. The ballot must first be arranged with all the names for each office on the ballot in an order determined by lot by the county auditor ~~or responsible election official~~ and prepared by the county auditor for all state, district, and county offices.
 - b. ~~In printing each set of official ballots for the various election precincts, the position of the names must be changed in each office division as many times as there are candidates in the office division in which there are the most names. The same number of ballots must be printed after each change of position.~~
 - c. ~~In making the changes of position, the printer shall take the candidate's name at the head of each office division and place it at the bottom of that division, moving the column up so the name that was second before the change is first after the change.~~
3. 2. ~~In precincts employing voting machines, the~~ The position of names ~~which that~~ require alternating under the provisions of this section must be alternated so the name appearing first in one precinct will be last in the next precinct, and the name that appeared second must be first in the next precinct, and so on until each name has been moved up or over one space accordingly. This process must be continued from one precinct to another and for as many names as are involved. There must

be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:

- a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.
 - b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.
4. 3. The precincts must be arranged according to the total votes cast for governor at the last general election in which the office of governor was filled, starting with the precinct having the highest total votes cast and ending with the precinct having the lowest total votes cast in that election.
- ~~5. If there are more than three candidates for any office, and it is not possible to place all of the names on one line, the names must be placed in two or more lines having an equal or nearly equal number of names on each line; provided, that in no event may only one name appear on any line.~~

SECTION 2. REPEAL. Section 16.1-11-28 of the North Dakota Century Code is repealed.

Approved March 11, 1999

Filed March 11, 1999

FIRES

CHAPTER 210

HOUSE BILL NO. 1366

(Representatives Disrud, Severson)

(Senators Andrist, Heitkamp)

FIREMEN'S ASSOCIATION DUTIES

AN ACT to amend and reenact sections 18-03-01, 18-03-02, 18-03-03, 18-03-04, 18-03-05, 18-03-06, 18-04-01, and 18-04-02 of the North Dakota Century Code, relating to the duties and responsibilities of the North Dakota firemen's association and the filing of annual organization certificates by fire departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-03-01 of the North Dakota Century Code is amended and reenacted as follows:

18-03-01. North Dakota firemen's association - How constituted. The North Dakota firemen's association ~~shall consist~~ consists of the various organized fire departments and fire protection districts within this state, and each fire department, fire protection district, and firefighter within the state is entitled to membership in ~~such~~ the association upon compliance with the constitution and bylaws ~~thereof~~ of the association.

SECTION 2. AMENDMENT. Section 18-03-02 of the North Dakota Century Code is amended and reenacted as follows:

18-03-02. Regional fire Fire schools. ~~Four or more regional fire~~ Fire schools must be held annually under the direction of the North Dakota firemen's association. The schools must be held at such times and in such places in North Dakota as may be designated by the North Dakota firemen's association ~~at its annual state convention~~ executive board. Fire schools may be held by teleconference, video, or other alternative media.

SECTION 3. AMENDMENT. Section 18-03-03 of the North Dakota Century Code is amended and reenacted as follows:

18-03-03. Secretary Association to report to office of management and budget time and place of school and name of treasurer. ~~At least thirty days prior to the date of holding any such school, the secretary of the~~ The North Dakota firemen's association shall ~~forward~~ submit to the office of management and budget ~~the name of the place where, and the date when, each regional fire school will be~~ an annual report of all fire schools held in the state. The ~~secretary~~ association also shall furnish to the office of management and budget the name and address of the treasurer of the association.

SECTION 4. AMENDMENT. Section 18-03-04 of the North Dakota Century Code is amended and reenacted as follows:

18-03-04. Association to furnish bond. The North Dakota firemen's association shall file with the director of the office of management and budget a ~~good and sufficient~~ bond in the penal sum of two thousand dollars conditioned for the faithful disposition of the funds appropriated by the legislative assembly for the use of the association in conducting ~~regional~~ fire schools.

SECTION 5. AMENDMENT. Section 18-03-05 of the North Dakota Century Code is amended and reenacted as follows:

18-03-05. Statement of desired appropriation submitted to office of the budget. Not later than July first of each year next preceding a regular session of the legislative assembly, the director of the budget shall send to the ~~secretary of the~~ North Dakota firemen's association a suitable blank form to be filled out ~~by such secretary~~ with an itemized statement of the amount of money ~~the secretary considers~~ necessary to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to conduct the ~~regional~~ fire schools to be held during the succeeding biennium under the direction of the association. The ~~secretary~~ association shall return the blanks properly filled out as provided in section 54-44.1-04.

SECTION 6. AMENDMENT. Section 18-03-06 of the North Dakota Century Code is amended and reenacted as follows:

18-03-06. Director of the budget to prepare estimate for firemen's association. The director of the budget shall include, with its estimates, an estimate of the amounts necessary to be appropriated to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to conduct ~~regional~~ fire schools.

SECTION 7. AMENDMENT. Section 18-04-01 of the North Dakota Century Code is amended and reenacted as follows:

18-04-01. Eligibility for participation in fund created from premium tax on fire insurance companies. ~~In order to~~ To become eligible for the benefits provided under this chapter, a city, or one or more townships or fire districts, shall maintain therein for a period of at least eight months ~~prior to~~ before the filing of the certificate required under section 18-04-02 an organized fire district or department which:

1. Has been in actual existence for the period ~~herein~~ specified in this section;
2. Has had as a part of its equipment at least one ~~steam, hand, or other~~ fire engine or truck; and
3. Has had a membership of at least fifteen persons. ~~Such~~ The department or district also must be a member of the North Dakota firemen's association in good standing at the time the benefits are paid.
4. Has been in compliance with the requirements to report fires as set forth in section 18-01-06.

Change in a fire department's name, or incorporation into a fire district, must be deemed a waiver of the eight-month waiting period for filing a certificate of existence under section 18-04-02.

SECTION 8. AMENDMENT. Section 18-04-02 of the North Dakota Century Code is amended and reenacted as follows:

18-04-02. City auditor or secretary of rural fire department to file certificate with state fire marshal and commissioner of insurance. On or before the thirty-first day of October in each year, the auditor or secretary of any city or rural fire department ~~which~~ that has an organized fire department shall ~~make and~~ file with the state fire marshal and with the commissioner of insurance the auditor's or secretary's certificate stating the existence of the fire department, the date of its organization, the number of ~~steam, hand, or other~~ fire engines, hook and ladder trucks, ~~and hose carts in actual use,~~ the number of organized companies in the department, the number of members in each company, and the system of water supply in use by the department, with such other facts as the state fire marshal or commissioner may require.

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 211

HOUSE BILL NO. 1201

(Representatives Drovdal, Lloyd, Warner)
(Senators Bowman, Lyson, O'Connell)

RURAL FIRE PROTECTION DISTRICT RELIEF ASSOCIATIONS

AN ACT to create and enact a new subsection to section 18-10-06 of the North Dakota Century Code, relating to powers of rural fire protection districts; and to amend and reenact sections 18-04-07, 18-05-01, 18-05-02, 18-05-03, 18-05-04, 18-05-05, 18-05-06, 18-05-07, 18-05-08, 18-05-09, 18-05-10, 18-05-12, 18-05-13, 28-22-19, subsection 70 of section 40-05-01, 40-46-01, subsection 21 of section 57-15-10, section 57-15-43, and subdivision j of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to the organization of firefighters relief associations by fire departments and rural fire protection districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-07 of the North Dakota Century Code is amended and reenacted as follows:

18-04-07. Disbursement of fund by city auditor. Moneys received by the city auditor under the provisions of this chapter must be disbursed as follows:

1. In a city having a paid fire department, ~~such amount~~ the money must be placed in a fund to be disbursed by the governing body of the municipality in maintaining ~~such the~~ fire department. If the municipality has a duly organized and incorporated ~~firemen's~~ firefighters relief association, the ~~amount~~ money must be disbursed in accordance with section 18-05-04.
2. In a city or rural fire protection district having no paid fire department, ~~such amount~~ the money must be paid over to the treasurer of the fire department, or to the treasurer of each separately organized fire company ~~which that~~ which satisfies the requirements of section 18-04-01 in equal proportions when there ~~are~~ is more than one in the municipality or rural fire protection district, upon the written order of ~~such the~~ the department or companies approved by the governing body of the municipality or rural fire protection district. If the municipality or rural fire protection district has a duly organized and incorporated firefighters relief association, the amount must be disbursed in accordance with section 18-05-04.
3. For the purpose of this section, a nonpaid or volunteer fire department is any department ~~where~~ in which less than fifty percent of the personnel of ~~said~~ the department are full-time regularly salaried firefighters. A volunteer firefighter is a firefighter who does not receive a regular monthly salary though the firefighter may receive compensation for each fire call the firefighter responds to.

SECTION 2. AMENDMENT. Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

18-05-01. Firemen's Firefighters relief association - Where it may be organized. A ~~firemen's~~ firefighters relief association may be organized in any city ~~which~~ or rural fire protection district that has a ~~paid~~ fire department. In organizing ~~such~~ a firefighters relief association, the procedure provided in chapter 10-33 must be followed.

SECTION 3. AMENDMENT. Section 18-05-02 of the North Dakota Century Code is amended and reenacted as follows:

18-05-02. Control of funds - Derivation of funds. Through its board of trustees and officers, a ~~firemen's~~ firefighters relief association ~~shall have~~ has full charge, management, and control of the funds provided for in this chapter, which funds must be derived from the following sources:

1. From interest, rents, gifts, or money from other sources; and
2. From funds received from the state ~~of North Dakota~~.

SECTION 4. AMENDMENT. Section 18-05-03 of the North Dakota Century Code is amended and reenacted as follows:

18-05-03. Treasurer of relief association to furnish bond. Before entering upon the duties of office, the treasurer of every ~~firemen's~~ firefighters relief association shall give a good and sufficient bond to the association conditioned for the faithful discharge of the duties of ~~the office treasurer~~, and for the safekeeping and paying over, according to law, of all moneys ~~which~~ that come into the ~~person's~~ treasurer's hands ~~as such~~ while acting as treasurer.

SECTION 5. AMENDMENT. Section 18-05-04 of the North Dakota Century Code is amended and reenacted as follows:

18-05-04. Apportioning insurance tax received by city or rural fire protection district. ~~The amount received under section 18-04-05 by the city auditor in a city having or the treasurer of a rural fire protection district with a paid fire department and a duly organized and incorporated firemen's firefighters relief association except as hereinafter provided must be apportioned as follows: shall apportion the amount received under section 18-04-05, so one-half thereof must be of the amount is placed in a fund to be disbursed by the city's or rural fire protection district's governing body in maintaining the fire department; and one-half thereof must be is paid to the treasurer of the firemen's firefighters relief association. Instead of making such apportionment~~ Except, the city's governing body in its discretion may direct the city auditor or the rural fire protection district's board of directors may direct the treasurer to pay all or any portion of the one-half of the amount so received which would otherwise be disbursed in maintaining the fire department to the treasurer of the firemen's firefighters relief association if its financial condition makes such the disposition necessary or advisable.

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

18-05-05. Disbursement of money received by treasurer of firemen's firefighters relief association. The amount received by the treasurer of a ~~firemen's~~ firefighters relief association.

firefighters relief association from ~~this~~ the state may be disbursed for the following purposes only:

1. For the maintenance of the association.
2. For pensions to and the relief of sick, injured, and disabled members of any fire department in the municipality or the rural fire protection district and ~~their widows and orphans~~ the members' surviving spouses and children.
3. For the payment of service pensions as provided in section 18-05-06 in ~~such~~ the amounts and in ~~such~~ manner as the association designates in its articles of incorporation and bylaws.

SECTION 7. AMENDMENT. Section 18-05-06 of the North Dakota Century Code is amended and reenacted as follows:

18-05-06. Service pension - Who may receive - Recipient entitled to no further relief from association.

1. A ~~firemen's~~ firefighters relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or ~~from~~ any other source a service pension in ~~such~~ an amount; not exceeding two hundred dollars per month, as may be provided by ~~its~~ the association's bylaws, to each of its members who has retired and who:
 1. a. Has reached the age of fifty years;
 2. b. Has done active duty for twenty years or more as a member of a ~~volunteer, paid, or partially paid and partially volunteer,~~ fire department in the municipality or rural fire protection district in which ~~such~~ the association exists;
 3. c. Has been a member of the ~~firemen's~~ firefighters relief association for at least ten years ~~prior to~~ before the date of ~~the person's~~ retirement; and
 4. d. Complies with any additional conditions as to age, service, and membership ~~which~~ that may be prescribed by the bylaws of the association.
2. ~~No~~ A pension may ~~not~~ be paid to any ~~person~~ individual while ~~the person~~ that individual remains a member of the fire department or rural fire protection district department, and a ~~person~~ an individual who is receiving a service pension is entitled to no other relief from the association. An individual who becomes a member of a firefighters relief association at the time of the formation of the association and who meets all of the requirements of subsection 1, except subdivision c relating to vesting, may receive a retirement benefit under this section if the benefit is actuarially reduced to account for the decreased period of contribution to the fund.

SECTION 8. AMENDMENT. Section 18-05-07 of the North Dakota Century Code is amended and reenacted as follows:

18-05-07. Eligibility for service pension may be acquired by paying back assessments. ~~Any~~ A firefighter who, for the number of years required for retirement, actually has served in a fire department in a municipality or rural fire protection district in which a ~~firemen's~~ firefighters relief association has been organized and who pays into the ~~firemen's~~ firefighters relief and pension fund maintained in ~~such~~ the municipality assessments equal to the amounts assessed against the members of the association during the time of the ~~person's~~ firefighter's service in the department, with interest upon ~~such~~ the assessments, must be allowed membership in the association and ~~shall~~ is entitled to receive, upon retirement, the same pension from the fund as is paid to other firefighters. The bylaws of an association may not contain any provision ~~which~~ that discriminates against a firefighter who actually has worked as ~~such~~ a firefighter during the number of years required by the bylaws or which prevents the ~~person~~ firefighter from, or discriminates against the ~~person~~ firefighter in, participating in the association or in the benefits from the fund. The rights provided for in this chapter are acquired by compliance with this section whether ~~such~~ compliance was accomplished ~~prior~~ before or ~~subsequent to~~ after July 1, 1935, without regard to the time when the required service was performed.

SECTION 9. AMENDMENT. Section 18-05-08 of the North Dakota Century Code is amended and reenacted as follows:

18-05-08. Pensions to be uniform - Reduction or increase in pensions authorized. All pensions granted in a municipality or rural fire protection district under the provisions of this chapter must be uniform in amount. Every association, however, ~~shall have the right at all times to~~ may reduce or increase the amount of pensions, within the limitations contained in this chapter, whenever the amount of funds on hand or other good reason renders such action advisable.

SECTION 10. AMENDMENT. Section 18-05-09 of the North Dakota Century Code is amended and reenacted as follows:

18-05-09. Who deemed firefighter. ~~No~~ A substitute firefighter, ~~no~~ a person serving on probation, and ~~no~~ a firefighter in a municipality or rural fire protection district having a relief association in its fire department who is not a member of ~~such~~ the association may not be deemed a firefighter within the meaning of this chapter.

SECTION 11. AMENDMENT. Section 18-05-10 of the North Dakota Century Code is amended and reenacted as follows:

18-05-10. Qualifications as to age and term of service inapplicable to pension for disability. The qualifications as to age and term of service prescribed by this chapter do not apply to a member of a fire department who makes an application for a pension on account of injuries or disabilities ~~which make the person that result~~ in the firefighter being unfit for to perform the duties of an active firefighter. The relief association shall pay the pension to ~~such~~ those members, or to the ~~widow or orphans~~ surviving spouse or children of a deceased firefighter, in ~~such~~ the amounts and under ~~such~~ the limitations and conditions as its articles of incorporation and bylaws provide and permit. ~~No~~ A pension paid to any one family, however, may not exceed the maximum monthly service pension permitted under this chapter.

SECTION 12. AMENDMENT. Section 18-05-12 of the North Dakota Century Code is amended and reenacted as follows:

18-05-12. Secretary and treasurer of firemen's firefighters relief association to prepare report - Contents - Filing. The secretary and treasurer of every ~~firemen's~~

firefighters relief association shall prepare annually a report of all the receipts and expenditures of the association for the previous year showing the source of all receipts and for what purpose and to whom any money was paid and expended. ~~Such~~ The report must be filed in the office of the city auditor of the municipality wherein the association is situated or in the case of a rural fire protection district the office of the county auditor of the county in which the rural fire protection district is located, and a duplicate of the report must be filed with the office of management and budget before any money may be paid to ~~any such~~ the relief association.

SECTION 13. AMENDMENT. Section 18-05-13 of the North Dakota Century Code is amended and reenacted as follows:

18-05-13. Audit of books of relief association - Report of unauthorized spending to governor - Duty of governor. The books and accounts of the secretary and treasurer of each ~~firemen's~~ firefighters relief association receiving funds under the provisions of this chapter must be audited as required by section 54-10-14. If the money, or any part of it, has been or is being expended for unauthorized purposes, the facts must be reported to the governor. Thereupon, the governor shall direct the office of management and budget not to prepare any warrants for the benefits of the fire department or relief association of the municipality in which ~~such the~~ association is organized until it appears to the state auditor, who shall report the fact to the governor, that all moneys wrongfully expended have been replaced. The governor may take such further action as the emergency may demand.

SECTION 14. A new subsection to section 18-10-06 of the North Dakota Century Code is created and enacted as follows:

To establish a firefighters relief association under chapter 18-05.

SECTION 15. AMENDMENT. Section 28-22-19 of the 1997 Supplement to 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~~ firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

¹⁶⁸ **SECTION 16. AMENDMENT.** Subsection 70 of section 40-05-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

70. Employee pension system. To adopt, by ordinance, a city employee pension system ~~which~~ that may provide all rules and regulations governing its operation and discontinuance, provided other pensions systems allowed by statute are not in effect, excepting ~~firemen's~~ firefighters relief associations and federal social security, or in order to consolidate existing pension plans. In addition to all other rules and regulations deemed necessary and proper by the governing body, it may provide as to matters pertaining to membership, tax levies in an amount not exceeding the total levies authorized by chapters 40-45 and 40-46, membership fees and assessments, management, investments, acceptance of money and property, retirement conditions and payment amount, continuance of system and discontinuance procedures, discontinuance payments, entrance into contracts with an insurance firm or firms for coverage of ~~such~~ the employee pension system.

SECTION 17. AMENDMENT. Section 40-46-01 of the North Dakota Century Code is amended and reenacted as follows:

40-46-01. Adoption of employees' pension plan - Exclusion of police and members of ~~firemen's~~ firefighters relief associations. The provisions of this chapter ~~shall~~ become operative in any city qualified to adopt the same by:

1. The adoption by the governing body of the city of a plan substantially setting forth the provisions of this chapter; and
2. The concurrence in ~~such~~ the plan by the employees of the city by a majority vote thereof.

Thereafter, all employees of the city ~~shall be~~ are bound by the provisions of ~~such~~ the plan without further action by the governing body or by the employees of the city. For ~~the~~ purposes of this chapter, members of the police force of the city ~~shall be~~ are not ~~be~~ considered employees of the city and members of a ~~firemen's~~ firefighters relief association ~~shall be~~ are not ~~be~~ considered employees of the city, if by a majority vote of the members thereof, they exclude themselves.

¹⁶⁹ **SECTION 18. AMENDMENT.** Subsection 21 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

21. Taxes levied for an organized ~~firemen's~~ firefighters relief association in accordance with section 57-15-43 may be levied in an amount not exceeding one-half of one mill.

SECTION 19. AMENDMENT. Section 57-15-43 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶⁸ Section 40-05-01 was also amended by section 9 of Senate Bill No. 2334, chapter 503.

¹⁶⁹ Section 57-15-10 was also amended by section 73 of House Bill No. 1045, chapter 50, and section 2 of Senate Bill No. 2382, chapter 499.

57-15-43. Tax levy for city having an organized firemen's firefighters relief association - Limitations - Disbursement. ~~Any~~ A city having an organized firemen's firefighters relief association as provided for under chapter 18-05; may levy an annual tax not exceeding the limitation in subsection 21 of section 57-15-10 for the purpose of assisting ~~such firemen's~~ the firefighters relief association in providing for the pension and relief provided for by ~~such~~ the association.

On the last day of June and December of each year, the auditor of ~~any a~~ a city covered by this section shall deliver and turn over to the treasurer of ~~any such firemen's~~ the firefighters relief association, having qualified as provided for in chapter 18-05, all moneys collected under this section.

¹⁷⁰ **SECTION 20. AMENDMENT.** Subdivision j of subsection 1 of section 57-38-01.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the ~~firemen's~~ firefighters relief associations authorized by chapters 18-05 and 18-11, policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

Approved March 9, 1999
Filed March 9, 1999

¹⁷⁰ Section 57-38-01.2 was also amended by section 5 of Senate Bill No. 2009, chapter 31, section 2 of House Bill No. 1106, chapter 487, and section 3 of House Bill No. 1106, chapter 487.

CHAPTER 212

SENATE BILL NO. 2347

(Senators Grindberg, C. Nelson, B. Stenehjem)
(Representatives Berg, Ekstrom)

ALTERNATE FIREFIGHTERS RELIEF ASSOCIATION BENEFITS

AN ACT to create and enact two new sections to chapter 18-11 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits; to provide for retroactive application; 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 18-11 of the North Dakota Century Code is created and enacted as follows:

Service pensions - Formulation of optional plan. With the consent of the governing body of the city involved, and in substitution for a pension payment schedule provided in section 18-11-15, a firefighters relief association may adopt a monthly service pension plan for members of the association as provided in this section.

1. Retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years.
2. Retirement benefits for members reaching the retirement date equal an annual amount, payable monthly, comprised of a service benefit that equals two and thirty-three hundredths percent of a first-class firefighter's salary at the time of the member's retirement multiplied by the number of years of service employment up to a maximum of thirty years.
3. Upon termination of employment after completing ten years of eligible employment but before the retirement date, a member is eligible to receive deferred vested retirement benefits payable commencing on the retirement date equal to one hundred percent of the member's accrued benefits.
4. Members participating in a firefighters relief association paying a monthly service pension to members of the association under this section must serve ten years before they are eligible for a service pension.

SECTION 2. A new section to chapter 18-11 of the North Dakota Century Code is created and enacted as follows:

Optional plan postretirement adjustments. Upon the recommendation of the association's actuary, a firefighters relief association adopting a monthly service pension plan under section 1 of this Act may implement postretirement adjustments on an actuarially sound basis to pensioners and beneficiaries under the plan.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act is retroactive to January 1, 1998.

SECTION 4. EXPIRATION DATE. Section 2 of this Act is effective through July 31, 2001, and after that date is ineffective.

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

Approved March 22, 1999
Filed March 22, 1999

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 213

SENATE BILL NO. 2270

(Senators Krauter, D. Mathern, Tomac)
(Representatives Fairfield, Martinson, Price)

COUNTRY OF ORIGIN LABELS

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to country of origin labels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Country of origin labels. Each retailer shall indicate, by label, to customers the country of origin of fresh beef, lamb, and pork available for sale to customers. For purposes of this section, a label means a clearly visible printed or written indication that is placed in the immediate vicinity of the food product. This section does not apply to a restaurant, cafeteria, prepared food service establishment, or mobile food unit.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 214

SENATE BILL NO. 2349

(Senators Grindberg, Flakoll)
(Representative Clark)

EXEMPLARY DAMAGE LIMITATIONS

AN ACT to create and enact a new section to chapter 19-02.1 of the North Dakota Century Code, relating to limitations on exemplary damages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Limitation on exemplary damages.

1. Exemplary damages may not be awarded against the manufacturer or seller of a product or device that caused the harm claimed by the plaintiff if:
 - a. The product or device was subject to approval under 21 United States Code 355 or premarket approval under 21 United States Code 360e by the food and drug administration with respect to the safety of formulation or performance of the aspect of the product or device that caused the harm, or by the adequacy of the packaging or labeling of the product or device; or
 - b. The product or device was approved by the food and drug administration.
2. Subsection 1 does not apply in a case in which it is determined on the basis of clear and convincing evidence that the defendant:
 - a. Withheld from or misrepresented to the food and drug administration information concerning the product or device which is required to be submitted under the federal Act which is material and relevant to the harm suffered by the claimant;
 - b. Made an illegal payment to an official of the food and drug administration for the purpose of securing approval of the product or device;
 - c. Failed to use reasonable care to comply with the food and drug administration regulations concerning the manufacture of, or the investigation and correction of defects in design or manufacture of, a medical device, and the failure to comply has caused the harm suffered by the plaintiff;
 - d. Made a significant or knowing departure from official food and drug administration requirements; or

- e. Acted with conscious disregard for human safety.

Approved April 2, 1999

Filed April 2, 1999

CHAPTER 215

SENATE BILL NO. 2371

(Senator Watne)

DRUG FORFEITURE CASE PRESUMPTION

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to a presumption in drug forfeiture cases; and to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the asset forfeiture fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Drug currency forfeiture.

1. There is a presumption of forfeiture for money, coin, currency and everything of value, furnished or intended to be furnished, in exchange for a controlled substance in violation of chapter 19-03.1 or imitation controlled substance in violation of chapter 19-03.2, if the state offers a reasonable basis to believe, based on the following circumstances, that there is a substantial connection between the property and an offense listed in chapter 19-03.1 or 19-03.2:
 - a. The property at issue is currency in excess of ten thousand dollars which, at the time of seizure, was being transported through an airport, on a highway, or at a port-of-entry, and the property was packaged or concealed in a highly unusual manner, the person transporting the property provided false information to any law enforcement officer who lawfully stopped the person for investigative purposes, the property was found in close proximity to a measurable quantity of any controlled substance, or the property was the subject of a positive alert by a properly trained dog;
 - b. The property at issue was acquired during a period of time when the person who acquired the property was engaged in an offense under chapter 19-03.1 or 19-03.2 or within a reasonable time after the period, and there is no likely source for the property other than that offense;
 - c. The property at issue was, or was intended to be, transported, transmitted, or transferred to or from a major drug-transit country, a major illicit drug producing country, or a major money laundering country, and the transaction giving rise to the forfeiture:
 - (1) Occurred in part in a state or foreign country whose bank secrecy laws render this state unable to obtain records relating to the transaction; or
 - (2) Was conducted by, to, or through a corporation that does not conduct any ongoing and significant commercial or

manufacturing business or any other form of commercial operation which was not engaged in any legitimate business activity; or

d. A person involved in the transaction giving rise to the forfeiture action has been convicted in a federal, state, or foreign jurisdiction of an offense equivalent to an offense under chapter 19-03.1 or 19-03.2 or a felony involving money laundering, or is a fugitive from prosecution for any of these offenses.

2. The presumption in this section does not preclude the use of other presumptions or the establishment of probable cause based on criteria other than those set forth in this section.

SECTION 2. AMENDMENT. Section 54-12-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation. ~~There is hereby created a fund to be known as the~~ The attorney general assets forfeiture fund- ~~The fund~~ consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36, amounts received through court proceedings as restitution, and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. ~~The total aggregate amount in~~ of deposits into the fund which do not come from legislative appropriation and are not payable to another governmental entity may not exceed ~~five~~ two hundred thousand dollars within a biennium and ~~at the end of each fiscal year~~ any moneys in excess of that amount must be deposited in the general fund. The funds are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For repayment of rewards to qualified local programs approved under section 12.1-32-02.2, if the information that was reported to the qualified local program substantially contributed to forfeiture of the asset, and for paying, at the discretion of the attorney general, rewards for other information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping, for law enforcement functions, forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state board of pharmacy or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of any state criminal law or law relating to the control of drug abuse.

6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of the fund, and shall personally approve, in writing, all requests from the chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of the fund.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 216**SENATE BILL NO. 2353**

(Senator Tallackson)

(Representatives Dalrymple, Gorder, Nicholas)

ALCOHOL-BLENDED GASOLINE SALE NOTICES

AN ACT to amend and reenact section 19-10-03.1 of the North Dakota Century Code, relating to alcohol-blended gasoline sale notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-10-03.1. Retail sale of alcohol-blended gasoline - Notice required. No dealer may sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

Approved March 19, 1999

Filed March 22, 1999

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 217

HOUSE BILL NO. 1411 (Representative Carlson)

PUBLIC ACCESS BROCHURES

AN ACT to amend and reenact subdivision d of subsection 19 of section 20.1-02-05 of the North Dakota Century Code, relating to publication of public access booklets under the private land habitat and access improvement program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 19 of section 20.1-02-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. Publishing ~~and selling a booklet~~ brochure on an annual basis describing ~~lands that~~ areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 218

SENATE BILL NO. 2089

(Natural Resources Committee)

(At the request of the Game and Fish Department)

NONRESIDENT SPRING WHITE GOOSE AND GRATIS LICENSES

AN ACT to create and enact a new section to chapter 20.1-03 and a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to a nonresident spring white goose license; to amend and reenact sections 20.1-03-02, 20.1-03-07, 20.1-03-07.1, subsections 3, 5, 7, and 8 of section 20.1-03-11, and section 20.1-03-12.1 of the North Dakota Century Code, relating to establishment of a nonresident spring white goose license and to gratis and preferential landowner big game hunting licenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-02. General game license - Stamps allowed for specific licenses. ~~No~~ Except as provided in section 4 of this Act, a person may not:

1. Acquire any resident or nonresident license to hunt, catch, take, or kill any small game or big game animal unless that person first obtains an annual general game license.
2. Hunt, catch, take, trap, or kill any small game or big game animal unless that person has in that person's possession an annual general game license together with the specific license required.

The director shall design and furnish, for sale to residents and nonresidents, an annual general game license. A stamp may be prepared by the director to be affixed to a general game license in place of each separate small game or big game hunting license.

SECTION 2. AMENDMENT. Section 20.1-03-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07. Licenses to hunt, trap, or fish required of nonresidents. Nonresidents, except as provided in sections 20.1-02-05, section 4 of this Act, and 20.1-03-08, may not:

1. Hunt, catch, take, or kill any small game without a nonresident small game license.
2. Trap, catch, attempt to catch, take, or kill any protected fur-bearing animal except that nonresidents holding a valid nonresident fur-bearer and nongame hunting license may hunt only fox and coyote and residents of a state that allows North Dakota residents to trap within

that state may purchase a nonresident reciprocal trapping license to trap in this state. However, a nonresident holding a valid nonresident reciprocal trapping license may not trap, catch, attempt to catch, take, or kill bobcats.

3. Catch, attempt to catch, take, or kill any fish without having a nonresident fishing license.
4. Hunt, catch, take, or kill any unprotected bird or animal without having a nonresident nongame hunting license or nonresident fur-bearer and nongame hunting license.
5. Hunt, catch, take, or kill any big game animal without having the respective nonresident big game license.

Each violation of this section is a distinct and separate offense.

¹⁷¹ **SECTION 3. AMENDMENT.** Section 20.1-03-07.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. Nonresident waterfowl hunting license required. Except as provided in ~~section~~ sections 20.1-03-07.2 and section 4 of this Act, a nonresident may not hunt waterfowl unless that person first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days or any two periods of seven consecutive days each and in specified waterfowl hunting zones. A license authorizing two 7-day hunting periods may allow hunting in a different zone during each period. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

SECTION 4. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Nonresident spring white goose license. A nonresident may purchase a nonresident spring white goose license to hunt white geese during a spring season as determined by the governor by proclamation. The governor, in the governor's proclamation, may specify the number of licenses that may be issued and the manner in which they are to be issued. Nonresidents are not required to purchase any other license to hunt white geese during a spring white goose season. A nonresident is entitled to purchase only one nonresident spring white goose license per year; however, a nonresident may still purchase a nonresident waterfowl hunting license under section 20.1-03-07.1.

¹⁷¹ Section 20.1-03-07.1 was also amended by section 1 of House Bill No. 1459, chapter 219.

¹⁷² **SECTION 5. AMENDMENT.** Subsections 3, 5, 7, and 8 of section 20.1-03-11 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a person who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt deer without charge, or if that person is a nonresident upon payment of the fee requirement for a nonresident big game license, upon filing ~~an affidavit~~ a signed application describing that land. The land must be within a unit open for the hunting of deer. The license must include a legal description of the eligible land described in the ~~affidavit~~ completed application and may be used to hunt deer only upon that land. Upon request, a lessee shall provide proof that the land described in the ~~affidavit~~ completed application is leased for agricultural purposes. A person who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with that person, but no more than one license may be issued under this subsection for any qualifying land. A person transferring eligibility under this subsection may not receive a license under this subsection for the season for which the eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.

5. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt antelope without charge upon filing ~~an affidavit~~ a signed application describing that land. The land must be within a unit open for the hunting of antelope. The license must include a legal description of the eligible land described in the ~~affidavit~~ completed application and may be used to hunt antelope only upon that land. Upon request, a lessee shall provide proof that the land described in the ~~affidavit~~ completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection may not receive a license under this subsection for the season for which eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The number of licenses issued without charge under this subsection may not exceed the total number of licenses prescribed for each district or unit in the governor's proclamation. If the number of eligible persons who apply for licenses issued without charge under this subsection exceeds the number of licenses prescribed for the district or unit in the governor's proclamation less any licenses that are otherwise designated to be issued with a charge under this subsection, the licenses to be issued without charge must be

¹⁷² Section 20.1-03-11 was also amended by section 1 of House Bill No. 1223, chapter 220, and section 1 of Senate Bill No. 2261, chapter 221.

issued by lottery as prescribed in the governor's proclamation. If the number of licenses prescribed for the district or unit in the governor's proclamation exceeds fifty and if the number of applications for these licenses exceeds the number of licenses prescribed for the district or unit in the governor's proclamation, then one-half of the licenses exceeding fifty must be issued by lottery as prescribed in the governor's proclamation and may not be issued to landowners without charge.

7. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt elk upon filing ~~an affidavit~~ a signed application describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the ~~affidavit~~ completed application and may be used to hunt elk within the district or unit in which the land described in the ~~affidavit~~ completed application is located. Upon request, a lessee shall provide proof that the land described in the ~~affidavit~~ completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility 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. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. 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 22; 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-six north, range ninety-seven 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; 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 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.

Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting an elk under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer, a one-time additional license to hunt elk in future years. A person who receives a second license under this subsection is not 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~~ completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the ~~affidavit~~ completed application. The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the rocky mountain elk foundation raffle under section 20.1-08-04.6.

8. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt moose without charge upon filing ~~an affidavit~~ a signed application describing that land. The land must be within a unit open for the hunting of moose. The license must include a legal description of the eligible land described in the ~~affidavit~~ completed application and may be used to hunt moose only upon that land. Upon request, a lessee shall provide proof that the land described in the ~~affidavit~~ completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or a legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility 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. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. 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 person who receives a license under this subsection and who is successful in harvesting a moose 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. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting a moose under this subsection, that person may return the unused license

to the department and is eligible to apply for, but not transfer, an additional license to hunt moose in future years. A person who receives a second license under this subsection is not eligible to participate in the North Dakota game warden association raffle under section 20.1-08-04.2. 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 completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the affidavit completed application. The governor's proclamation may restrict the area of land within a unit open for the hunting of moose for which a preferential license is issued under this subsection. If the proclamation restricts the area for issuance of preferential licenses, an applicant must own or lease land within the restricted area to be eligible to apply for a license to hunt moose upon payment of the fee required for a resident big game license. The license may be used to hunt moose within the entire unit in which the land described in the affidavit completed application is located. A successful applicant from a restricted area may not return an unused license to regain eligibility for a license to hunt moose in future years.

SECTION 6. A new subsection to section 20.1-03-12 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

For a nonresident spring white goose license, fifty dollars.

SECTION 7. AMENDMENT. Section 20.1-03-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - ~~No land~~ Land purchases not allowed. Except for licenses issued under section 4 of this Act, a habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of five dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged under section 20.1-03-12. ~~No land~~ Land may not be purchased with habitat restoration stamp moneys. All moneys generated by habitat restoration stamp fees must be placed in the game and fish private land habitat and access improvement fund.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 3, 1999
Filed March 3, 1999

CHAPTER 219**HOUSE BILL NO. 1459**

(Representatives Metcalf, Clark, Haas, Mueller, Pollert)

NONRESIDENT WATERFOWL HUNTING

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to waterfowl hunting by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷³ **SECTION 1. AMENDMENT.** Section 20.1-03-07.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. Nonresident waterfowl hunting license required. Except as provided in section 20.1-03-07.2, a nonresident may not hunt waterfowl unless that person first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days, any period of seven consecutive days, or any two periods of seven consecutive days each ~~and~~. A license authorizing the fourteen-day hunting period allows hunting in a specified waterfowl hunting zone. A license authorizing one 7-day hunting period allows hunting statewide. A license authorizing two 7-day hunting periods ~~may allow~~ allows hunting in a different ~~different~~ specified zone during each period. The governor, in the governor's proclamation, shall specify various waterfowl hunting zones for which nonresident waterfowl hunting licenses will be available, and may specify the number of licenses which may be issued in each zone and the manner in which they are to be issued. A nonresident is entitled to purchase only one nonresident waterfowl hunting license per year.

Approved March 9, 1999

Filed March 9, 1999

¹⁷³ Section 20.1-03-07.1 was also amended by section 3 of Senate Bill No. 2089, chapter 218.

CHAPTER 220

HOUSE BILL NO. 1223

(Representatives Nichols, Nelson, Solberg, Drovdal)
(Senators Heitkamp, Kinnoin)

GRATIS AND PREFERENTIAL DEER LICENSES

AN ACT to amend and reenact subsection 3 of section 20.1-03-11 of the North Dakota Century Code, relating to gratis and preferential landowner licenses to hunt deer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 20.1-03-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a person who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt deer without charge, or if that person is a nonresident upon payment of the fee requirement for a nonresident big game license, upon filing an affidavit describing that land. The land must be within a unit open for the hunting of deer. The license must include a legal description of the eligible land described in the affidavit and may be used to hunt deer only upon that land. However, a person, that person's spouse, and their children who have a license issued under this subsection may hunt together on land described in any of the affidavits making them eligible for the license. Family members hunting together under this provision shall hunt within the same unit within which the land described in the affidavit making them eligible for the license is located. Upon request a lessee shall provide proof that the land described in the affidavit is leased for agricultural purposes. A person who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with that person, but no more than one license may be issued under this subsection for any qualifying land. A person transferring eligibility under this subsection may not receive a license under this subsection for the season for which the eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.

Approved March 25, 1999
Filed March 25, 1999

¹⁷⁴ Section 20.1-03-11 was also amended by section 5 of Senate Bill No. 2089, chapter 218, and section 1 of Senate Bill No. 2261, chapter 221.

CHAPTER 221**SENATE BILL NO. 2261**

(Senator Kroeplin)
(Representative Carlson)

NONRESIDENT DEER LICENSES

AN ACT to amend and reenact subsection 4 of section 20.1-03-11 of the North Dakota Century Code, relating to purchase of deer hunting licenses by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁵ **SECTION 1. AMENDMENT.** Subsection 4 of section 20.1-03-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. 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, including licenses issued to nonresidents under subsection 3, must be allocated for nonresidents. Notwithstanding the number of licenses allocated under this subsection, upon payment of the fee requirement for a nonresident big game license, a nonresident may participate on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents.

Approved March 15, 1999
Filed March 16, 1999

¹⁷⁵ Section 20.1-03-11 was also amended by section 5 of Senate Bill No. 2089, chapter 218, and section 1 of House Bill No. 1223, chapter 220.

CHAPTER 222

SENATE BILL NO. 2091

(Natural Resources Committee)

(At the request of the Game and Fish Department)

GAME AND FISH LICENSE PROCEEDS DISPOSITION

AN ACT to amend and reenact section 20.1-03-17 of the North Dakota Century Code, relating to disposition of game and fish license proceeds; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds - Continuing appropriation. All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by county auditors, the director, deputy director, and bonded game wardens. The county auditors, deputy director, and each bonded game warden shall send the director all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor ~~shall retain~~ is entitled to be reimbursed, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license. The compensation due the county auditor for the issuance of licenses is hereby appropriated as a standing and continuing appropriation from the game and fish fund for the purposes of this section.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. However, a county auditor may not provide hunting licenses to agents located outside this state. The county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent. The remainder of the license fees must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited.

The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the director. The director shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

Approved March 4, 1999

Filed March 5, 1999

CHAPTER 223**SENATE BILL NO. 2350**

(Senator Grindberg)
(Representative Meyer)

CERTIFIED GUIDE REQUIREMENTS

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to requirements for certified guides or outfitters.

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:

Certified guides and outfitters - Requirements. An individual may not be issued a certified guide license without first providing the director:

1. Proof that the individual is covered by general liability insurance against loss or expense due to accident or injury from guiding or outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per incident;
2. Proof that the individual is currently certified in adult cardiopulmonary resuscitation or its equivalent; and
3. Proof that the individual is currently certified in standard first aid or its equivalent.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 224**SENATE BILL NO. 2090**

(Natural Resources Committee)

(At the request of the Game and Fish Department)

**SHOTGUN SHELL-HOLDING CAPACITY
RESTRICTION ELIMINATED**

AN ACT to repeal section 20.1-04-10 of the North Dakota Century Code, relating to the shell-holding capacity of shotguns used in taking game birds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 20.1-04-10 of the North Dakota Century Code is repealed.

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

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 225**SENATE BILL NO. 2373**

(Senator Bowman)
(Representative Meyer)

BIG GAME SEASON OPENING TIME

AN ACT to amend and reenact section 20.1-05-03 of the North Dakota Century Code, relating to the opening time for big game hunting seasons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-05-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-05-03. Season for taking and transporting big game - Bag limit. ~~Any~~ A person having a big game hunting license as prescribed in this title may take, kill, and transport, during the open or lawful season, one big game animal in this state. The open or lawful season on ~~big game animals~~ deer and antelope begins at twelve noon central standard time and on elk, moose, and bighorn sheep begins one-half hour before sunrise on any designated Friday as established by gubernatorial proclamation in accordance with this title. This section does not prohibit the transportation, shipment, or possession within this state of properly tagged big game legally taken in other states.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 226

HOUSE BILL NO. 1327

(Representatives Hanson, Kroeber, Stefonowicz)
(Senators B. Stenejem, Thompson, Traynor)

FISHHOUSES

AN ACT to amend and reenact sections 20.1-06-07 and 20.1-06-08 of the North Dakota Century Code, relating to fishhouses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-06-07 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-07. Fishhouses - License - Removal - Penalty.

1. ~~No A~~ person, ~~except as provided in section 20.1-06-05,~~ may erect, have, or maintain on the ice in any waters of this state, a fishhouse used or to be used while ice fishing, or a dark house used or to be used for spearfishing; ~~without first obtaining a separate license for each unit used. Licenses must be issued by the director, for the period of five winter fishing seasons, including the season commencing in the year of purchase. Fishhouse licenses are not transferable and fishhouses that are transferred must be relicensed for a five-year period by the new owner of the fishhouse. Licenses~~ Fishhouse and dark house owners are subject to the rules the director may adopt governing the construction, maintenance, and use of these units. The outside of each ~~licensed~~ unoccupied unit must have inscribed on it, in readily distinguishable characters at least ~~six~~ three inches [~~45.24~~ 7.62 centimeters] high, the ~~license number and the owner's name and address or phone number.~~ An unoccupied fishhouse or dark house left on the ice without an owner's name and address or phone number may be removed or destroyed by the department. Any person who violates this subsection is guilty of a class 2 noncriminal offense.
2. Each unit must be removed from the ice by that date established by the governor's proclamation. Failure to remove a unit is deemed an abandonment and the director may remove or destroy abandoned units.

SECTION 2. AMENDMENT. Section 20.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-06-08. Spearfishing from dark houses. Fish may be taken by spearing through the ice from dark houses. Spearfishing seasons, and the species which may be taken, must be provided for by the governor's order or proclamation. The fishing license provided for in chapter 20.1-03 includes the privilege of such spearfishing. ~~All dark houses must be licensed pursuant to section 20.1-06-07.~~

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 227

HOUSE BILL NO. 1195

(Representatives Hoffner, Henegar, Hanson)
(Senators Bowman, Mutzenberger, Traynor)

MUZZLELOADING DEER HUNTING SEASON

AN ACT to amend and reenact section 20.1-08-04.5 of the North Dakota Century Code, relating to the muzzleloading deer hunting season.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading firearms. The governor shall by proclamation provide for a ~~one-week~~ nine and one-half consecutive day season following the regular deer hunting season to hunt deer with muzzleloading firearms in the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading firearms must be issued by the director by lottery as prescribed by the director. The director shall issue two percent of the total white-tailed deer gun licenses available each year to hunters with muzzleloading firearms. Of the two percent, one-half of the licenses issued may be for antlered white-tailed deer.

Approved March 8, 1999

Filed March 8, 1999

GOVERNMENTAL FINANCE

CHAPTER 228

HOUSE BILL NO. 1168

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA LETTERS OF CREDIT

AN ACT to create and enact a new section to chapter 21-04 and a new subdivision to subsection 1 of section 41-09-23 of the North Dakota Century Code, relating to letters of credit issued by the Bank of North Dakota and requirements for security interests in collateral given to obtain a letter of credit for a pledge of security on a public deposit; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 21-04 of the North Dakota Century Code is created and enacted as follows:

Letters of credit for public deposits - Security interest - Priority - Written agreement. Letters of credit issued by the Bank of North Dakota in connection with section 21-04-09 must be secured by collateral. A security interest is created and attaches when the Bank issues a letter of credit in connection with section 21-04-09. Filing is not required for perfection of the security interest created and it is entitled to priority as to all creditors. The board of directors of a financial institution seeking a letter of credit from the Bank shall execute a written agreement with the Bank, reflect approval of the agreement in the board of director's minutes and, as of the date of execution of the agreement, keep a copy of the agreement as an official record.

SECTION 2. A new subdivision to subsection 1 of section 41-09-23 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Collateral given by a financial institution to secure a letter of credit issued by the Bank of North Dakota to serve as a pledge of security for a public deposit under section 21-04-09.

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

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 229**SENATE BILL NO. 2067**
(Senator Lee)**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 before July 1, 1999.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the 1997 Supplement to 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, ~~1993~~ 1999.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 230**HOUSE BILL NO. 1259**

(Representatives Berg, Carlson, Keiser, Wald)

**STATE INVESTMENT BOARD MEMBERSHIP AND
WORKERS' COMPENSATION RESERVES**

AN ACT to amend and reenact subsection 1 of section 21-10-01 and section 65-04-02 of the North Dakota Century Code, relating to the membership of the state investment board and to workers' compensation reserves.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 21-10-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of 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 director of the workers compensation bureau may appoint a designee, subject to approval by the workers compensation board of directors, to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the director of the workers compensation bureau or the director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents ~~as compensation~~ per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.

SECTION 2. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is amended and reenacted as follows:

65-04-02. Statutory reserve Reserves. Ten percent of the money that is paid into the workers' compensation fund must be set aside for the creation of a surplus until such surplus amounts to the sum of fifty thousand dollars; after which time the sum of five percent of all the money paid into such fund must be credited to such surplus fund until, in the judgment of the bureau, the surplus is sufficiently large to guaranty the fund from year to year. Thereafter transfer of funds to the surplus fund may be discontinued temporarily for one or more years; or until, in the judgment of the bureau, the transfer of five percent of all money paid into such fund to such surplus again is necessary. The bureau shall maintain adequate financial reserves to ensure the solvency of the fund and the payment of future benefit obligations, based upon actuarially sound principles. The independent annual financial audit of the bureau must report the bureau's financial reserves.

Approved March 25, 1999

Filed March 25, 1999

HEALTH AND SAFETY

CHAPTER 231

SENATE BILL NO. 2109

(Senators Thane, DeMers)

(Representatives Rose, Weisz)

(At the request of the State Department of Health)

TRAUMATIC HEAD INJURY REGISTRY ELIMINATED

AN ACT to repeal sections 23-01-20 and 23-01-21 of the North Dakota Century Code, relating to the traumatic head injury registry; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 23-01-20 of the North Dakota Century Code and section 23-01-21 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 2. APPLICATION OF ACT. This Act does not affect the confidentiality of any record received or created under former sections 23-01-20 and 23-01-21.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 232

SENATE BILL NO. 2166

(Senators DeMers, Kilzer, Lee)

(At the request of the State Department of Health)

HEALTH INFORMATION DISCLOSURE

AN ACT to create and enact chapter 23-01.3 and a new section to chapter 23-17.3 of the North Dakota Century Code, relating to confidential or protected health information in possession of a public health authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-01.3 of the North Dakota Century Code is created and enacted as follows:

23-01.3-01. Definitions. As used in this chapter:

1. "Confidential information" includes any confidential record as defined in subsection 3 of section 44-04-17.1, any protected health information, and any other information declared confidential by law.
2. "Disclose" means to disclose, transfer, permit access to, or otherwise divulge protected health information to any person other than the individual who is the subject of that information and includes the initial disclosure and any subsequent redisclosures of individually identifiable health care information.
3. "Institutional review board" means any board, committee, or other group formally designated by an institution or public health authority or authorized under federal or state law to review, approve the initiation of, or conduct a periodic review of research programs to assure the protection of the rights and welfare of human research subjects.
4. "Law enforcement inquiry" means any executive branch investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant to such a statute.
5. "Nonidentifiable health information" means any information that would otherwise be protected health information except that it does not reveal the identity of the individual whose health or health care is the subject of the information and there is no reasonable basis to believe that the information could be used to identify that individual.
6. "Person" means a government, governmental subdivision of an executive branch agency or authority, corporation, company, association, firm, partnership, society, estate, trust, joint venture, individual, individual representative, tribal government, and any other legal entity.
7. "Protected health information" means any information, including genetic information, demographic information, and fluid or tissue samples

collected from an individual, diagnostic and test results, whether oral or recorded in any form or medium, which:

- a. Is created or received by a health care provider, health researcher, health plan, health oversight authority, public health authority, employer, health or life insurer, school or university; and
 - b. (1) Relates to the past, present, or future physical or mental health or condition of an individual, including individual cells and their components; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (2) (a) Identifies an individual; or
 - (b) With respect to which there is a reasonable basis to believe that the information can be used to identify an individual.
8. "Public health authority" means the state department of health, a local public health unit, and any authority or instrumentality of the United States, a tribal government, a state, or a political subdivision of a state, a foreign nation, or a political subdivision of a foreign nation, which is:
- a. Primarily responsible for public health matters; and
 - b. Primarily engaged in activities such as injury reporting, public health surveillance, and public health investigation or intervention.
9. "School or university" means an institution or place for instruction or education, including an elementary school, secondary school, or institution of higher learning, a college, or an assemblage of colleges united under one corporate organization or government.
10. "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.
11. "Writing" or "written" means writing in either a paper-based or computer-based form, including electronic signatures.

23-01.3-02. Disclosure of protected health information - In general. Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15, subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does not prohibit a public health authority from disclosing protected health information for use in a biomedical research project approved by an institutional review board or public health information that has been transformed to protect the identity of the patient through coding or encryption if the information is disclosed for use in an epidemiological or statistical study.

23-01.3-03. Disclosure of a patient's own record. Notwithstanding any other law, any confidential or protected health information may be disclosed by a public health authority to the person to whom the record pertains, that person's physician, or their legal or designated agent or guardian, if no other person is identified in the record. The public health authority may require a signed consent from the person prior to disclosing any information. This section does not apply to an agent or guardian if disclosing information to the agent or guardian is prohibited by law.

23-01.3-04. Nonpublic disclosure to a public health authority.

1. A health care provider, public health authority, law enforcement official, school or university, or the agent of any such individual or entity, may disclose protected health information concerning an individual to a public health authority if:
 - a. There is a specific nexus between the individual's identity and a threat of a specific disease, death, or injury to any individual or to the public health; and
 - b. The individual's identity would allow that public health authority to prevent or significantly reduce the possibility of disease, injury, or death to any individual or the public health.
2. An entity described in subsection 1 is not liable for the disclosure of protected health information:
 - a. To a public health authority based upon a good-faith belief and credible representation made by that authority that this information is required to protect an individual or the public health from a threat of a specific disease, injury, or death; or
 - b. If that disclosure is made pursuant to a federal or state law that is designed to protect the public health or safety.
3. Except for the failure to report information required by chapters 23-07, 23-07.1, 23-07.3, or 23-07.4, or any other law requiring disclosure of information regarding a disease or condition, an entity described in subsection 1 is not liable for the failure to disclose protected health information to a public health authority.
4. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to achieve the purposes of this section.
5. A recipient of information pursuant to this section may use or disclose that information solely to achieve the purposes of this section.
6. Nothing in this section permitting the disclosure of protected health information may be construed to require that disclosure, unless disclosure is otherwise required by law.
7. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this chapter.

23-01.3-05. Nonpublic disclosure in emergency circumstances.

1. In the event of a threat of imminent physical or mental harm to the subject of protected health information, a public health authority, in order to allay or remedy that threat, may disclose protected health information about that subject to a health care practitioner, health care facility, law enforcement authority, or emergency medical personnel to protect the health or safety of that subject.
2. In the event of a threat of harm to an individual other than the subject of protected health information, a public health authority may disclose protected health information about that subject if:
 - a. There is an identifiable threat of serious disease, injury, or death to an identifiable individual or group of individuals;
 - b. The subject of the protected health information has the ability to carry out that threat; and
 - c. The disclosure of that information is necessary to prevent or significantly reduce the possibility of that threat.
3. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to achieve the purposes of this section.
4. A recipient of information pursuant to this section may use or disclose that information solely to carry out the purposes of this section.
5. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this section.

23-01.3-06. Disclosure for law enforcement purposes.

1. Notwithstanding any other law, a public health authority, or the agent of any such entity, may disclose protected health information to a law enforcement authority if the state health officer determines that:
 - a. The protected health information is necessary to a legitimate law enforcement inquiry that has begun or may be initiated into a particular violation of a criminal law or public health law being conducted by the authority; and
 - b. The investigative or evidentiary needs of the law enforcement authority cannot be satisfied by nonidentifiable health information or by any other information.
2. If a public health authority discloses protected health information under this section, that authority shall impose appropriate written safeguards to ensure the confidentiality of the information and to protect against unauthorized or improper use or disclosure.
3. Protected health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual, unless the action or investigation arises out of, or is directly related to, the law enforcement inquiry for which the information was obtained.

4. When the matter or need for which protected health information was disclosed to a law enforcement authority or grand jury has concluded, including any derivative matters arising from that matter or need, the law enforcement authority or grand jury must either destroy the protected health information, or return it to the person from whom it was obtained.
5. To the extent practicable, and consistent with the requirements of due process, a law enforcement authority shall redact personally identifying information from protected health information prior to the public disclosure of that protected information in a judicial or administrative proceeding.
6. Any disclosure of protected health information under this section must be limited to the minimum amount of information necessary to fulfill the purposes of this section.
7. A recipient of information pursuant to this section may use or disclose that information solely to fulfill the purposes of this section.
8. Protected health information disclosed under this section must be clearly identified as protected health information that is subject to this chapter.
9. This section may not be construed to limit or restrict the ability of law enforcement authorities to gain information while in hot pursuit of a suspect or if other exigent circumstances exist.

23-01.3-07. Disclosure of a public health incident.

1. Notwithstanding any other law, the state health officer may disclose confidential information or protected health information to a health care provider or the public if the state health officer determines that:
 - a. Disclosure of information is required to prevent the spread of disease;
 - b. Disclosure of information is required to identify the cause or source of disease; or
 - c. Disclosure of information is required to allay fear and aid the public in understanding the risk of its exposure to disease.
2. The state health officer may disclose protected health information only to the extent necessary to accomplish the purposes of this section, and may require any health care provider receiving confidential or protected health information under this section to keep that information confidential under written terms.

23-01.3-08. Status of information in possession of a local public health authority. Any protected health information that is created or received by a local public health authority, and that is submitted or is required to be submitted to the state department of health, is confidential and subject to the protection of, and may be disclosed only as authorized by, this chapter.

23-01.3-09. Penalty for unauthorized disclosure. A person who knowingly discloses protected health information in violation of this chapter is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 23-17.3 of the North Dakota Century Code is created and enacted as follows:

Information confidential. Information received under this chapter by the state department of health, through inspection or otherwise, is confidential and may not be disclosed except:

1. In a proceeding involving the question of license;
2. In a judicial proceeding, upon a court order; or
3. To a health or social services agency with specific responsibility for a patient's care.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 233

SENATE BILL NO. 2253

(Senators Watne, Lyson)

HIV TEST REPORTS

AN ACT to create and enact a new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to confidentiality of human immunodeficiency virus infection test results; and to amend and reenact section 23-07-02.1 and subsection 2 of section 23-07-07.5 of the North Dakota Century Code, relating to reports of human immunodeficiency virus infection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty.

Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. ~~All persons, other than an attending physician, A~~ person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium, penal institution the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, the North Dakota youth correctional center, or other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility administrator or the facility administrator's designee. Further release of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 2. A new subdivision to subsection 1 of section 23-07.5-05 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

If the test subject is in the physical custody of the department of corrections and rehabilitation, to the director of the facility having physical custody of the test subject. If the test subject is a resident of the North Dakota youth correctional center, to the

superintendent. If the test subject is in a correctional facility as defined in chapter 12-44.1, to the correctional facility administrator.

SECTION 3. AMENDMENT. Subsection 2 of section 23-07-07.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 234**SENATE BILL NO. 2143**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

HOME-BASED INSTRUCTION INOCULATION FILING

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to the place of filing certification of inoculation for a child receiving home-based instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁶ **SECTION 1. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~No~~ A child may not 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~~ this state or be supervised through home-based instruction unless ~~such~~ the 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 that ~~such~~ the 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~~ public school district in which the child resides.

Approved March 11, 1999

Filed March 11, 1999

¹⁷⁶ Section 23-07-17.1 was also amended by section 1 of Senate Bill No. 2126, chapter 235.

CHAPTER 235

SENATE BILL NO. 2126

(Senators Thane, DeMers, Kilzer)

(Representatives Price, Rose)

(At the request of the State Department of Health)

INOCULATION REQUIREMENTS

AN ACT to amend and reenact subsections 1 and 3 of section 23-07-17.1 of the North Dakota Century Code, relating to diseases for which inoculations are required before a child's admission to school.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁷ **SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 23-07-17.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. ~~No~~ A child may not 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~~ this state or be supervised through home-based instruction unless ~~such~~ the 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 that ~~such~~ the child has received immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, ~~and~~ hepatitis B, haemophilus influenza type b (Hib), 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~~ public school district in which the child resides.
3. Any minor child, through the child's parent or guardian, may submit to the institution authorities either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by the child's parent or guardian whose religious, philosophical, or moral beliefs are opposed to such immunization. The minor child is then exempt from the provisions of this section.

Approved March 29, 1999

Filed March 29, 1999

¹⁷⁷ Section 23-07-17.1 was also amended by section 1 of Senate Bill No. 2143, chapter 234.

CHAPTER 236

SENATE BILL NO. 2196

(Senators Krauter, Sand, Thane)
(Representatives Carlisle, Delzer, Meyer)

BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to a moratorium on additional basic care facility and long-term care beds and a prohibition on the creation of a bed bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.3-01.1. Moratorium on expansion of basic care bed capacity. Except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4, the ~~state department of health~~ may not issue a license under this chapter for any additional bed capacity above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, ~~1997~~ 1999, during the period between August 1, ~~1997~~ 1999, and July 31, ~~1999~~ 2001. Transfers of existing beds from one municipality to another municipality must be approved if the ~~department of health~~ licensing requirements are met, during the period August 1, ~~1997~~ 1999, to July 31, ~~1999~~ 2001, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred. Existing licensed beds released by a facility which are not immediately transferred to another facility may not be banked for future transfer to another facility.

SECTION 2. AMENDMENT. Section 23-16-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity. Notwithstanding sections 23-16-06 and 23-16-10, except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4, the state department of health may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, ~~1997~~ 1999, during the period between August 1, ~~1997~~ 1999, and July 31, ~~1999~~ 2001. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, ~~1997~~ 1999, to July 31, ~~1999~~ 2001, only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred. ~~Certificate of need projects approved by the state health council before July 31, 1995, and not completed as of August 4, 1997, are considered to be within the state's licensed long-term care bed capacity as authorized by this section and may be completed. For long-term care bed transfers to be made within the state before the application of the one-for-one provisions in this section, the proposals for the transfer must have occurred and been discussed with the department of health before April 4, 1997, and confirmed with~~

contracts executed between the parties to the transfer, and filed with the department of health before June 1, 1997, providing for the bed transfers to be completed by January 1, 1998, and not exceeding the state's licensed long-term bed capacity as authorized by this section. Existing licensed beds released by a facility which are not immediately transferred to another facility may not be banked for future transfer to another facility.

Approved March 17, 1999

Filed March 17, 1999

CHAPTER 237

HOUSE BILL NO. 1143 (Representative DeKrey)

MEDICAL RECORD COPIES

AN ACT to provide for patient copies of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Copies of medical records.

1. As used in this section, "medical provider" means a licensed individual or licensed facility providing health care services. This section applies to every medical provider unless expressly provided otherwise by law. Upon the written request of a medical provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical care to another medical provider for the continuation of medical treatment.
 - b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.
2. A written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.

Approved March 23, 1999

Filed March 23, 1999

CHAPTER 238

SENATE BILL NO. 2437

(Senators Tallackson, Grindberg, Klein, T. Mathern)
(Representatives Herbel, Maragos)
(Approved by the Delayed Bills Committee)

SALE OF FIREWORKS

AN ACT to create and enact a new section to chapter 23-15 of the North Dakota Century Code, relating to fireworks sales for New Year's Eve 2000; and to amend and reenact section 23-15-01 of the North Dakota Century Code, relating to the sale of fireworks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁸ **SECTION 1. AMENDMENT.** Section 23-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-15-01. Fireworks defined - Sale of fireworks. The term fireworks means ~~and includes~~ any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation; ~~and.~~ The term includes any blank cartridges cartridge, toy pistols pistol, toy cannons cannon, toy canes cane, or toy guns gun in which explosives an explosive other than a toy paper caps cap is used; the type of balloons which require; balloon that requires fire underneath to propel the same; firecrackers balloon; firecracker, torpedoes torpedo, skyrockets skyrocket, Roman candles candle, daygo bombs bomb, sparklers sparkler, or other fireworks item of like construction; any fireworks; item containing any explosive or flammable compound; or any tablets tablet or other device containing any explosive substance. Nothing in this regulation may be construed as applying This section does not apply to any toy paper caps cap containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

Any person; ~~firm; corporation; or limited liability company having operated~~ operating a retail business ~~wherein in which~~ merchandise was assessed by the local taxing authority; on April first ~~immediately preceding thereto; and having of that year and which has~~ a retail license as provided in section 23-15-04 may offer for sale and sell at retail that year, to persons of any individual who is at least twelve years of age or more, only during the period beginning June twenty-seventh and ending through July fifth, both dates inclusive; the following items:

1. ~~Star lights~~ A star light, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball).

¹⁷⁸ Section 23-15-01 was also amended by section 1 of Senate Bill No. 2100, chapter 498.

2. ~~Helicopter~~ A helicopter type flyers flyer, total pyrotechnic composition not to exceed twenty grams each in weight.
3. ~~Cylindrical fountains~~ A cylindrical fountain, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].
4. ~~Cone fountains~~ A cone fountain, total pyrotechnic composition not to exceed fifty grams each in weight.
5. ~~Wheels~~ A wheel, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of a driver tubes tube may not be over one-half inch [12.7 millimeters].
6. ~~Illuminating torches and~~ An illuminating torch or a colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.
7. ~~Sparklers and~~ A sparkler or a dipped sticks stick, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.
8. ~~Comets and shells~~ A comet or shell, of which the mortar is an integral part, except ~~these~~ a comet or shell designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.
9. ~~Soft~~ A soft shell firecrackers firecracker not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.
10. ~~Whistles~~ A whistle without report, total pyrotechnic composition not to exceed forty grams each in weight.

SECTION 2. A new section to chapter 23-15 of the North Dakota Century Code is created and enacted as follows:

Sale of fireworks - New Year's Eve 2000. Notwithstanding the date limitations relating to the sale of fireworks under section 23-15-01, a person otherwise able to sell fireworks under section 23-15-01 may sell fireworks during the period December 26, 1999, through January 1, 2000.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 239

SENATE BILL NO. 2366

(Senators Naaden, Christmann, Mutch)
(Representative Brusegaard)

SOLID WASTE DEFINITION

AN ACT to amend and reenact subsection 14 of section 23-29-03 of the North Dakota Century Code, relating to the definition of solid waste.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 23-29-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~:
 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. 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.].

Approved March 19, 1999

Filed March 22, 1999

CHAPTER 240

SENATE BILL NO. 2178

(Natural Resources Committee)

(At the request of the Department of Health)

AIR AND WATER POLLUTION PENALTIES

AN ACT to amend and reenact sections 23-25-10 and 61-28-08 of the North Dakota Century Code, relating to air and water pollution penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-10 of the North Dakota Century Code is amended and reenacted as follows:

23-25-10. Enforcement - Penalties - Injunctions.

1. ~~If, after the completion of the administrative hearing process, the department determines that a violation of this chapter, or any rule, regulation, or order of the department issued under this chapter, has occurred, it shall make all of its evidence and findings available to the attorney general for use in any remedial action his office determines to be appropriate, including an action for injunctive relief.~~
2. Any person who willfully violates this chapter, or any permit condition ~~or, rule, order, limitation, or other applicable requirement~~ implementing this chapter ~~must be punished by, is subject to~~ a fine of not more than ~~twenty five ten~~ thousand dollars per day ~~of per~~ violation, or by imprisonment ~~in the county jail~~ for not more than one year, or ~~by both such fine and imprisonment.~~ If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment must be by a fine of not more than ~~fifty twenty~~ thousand dollars per day ~~of per~~ violation, or by imprisonment ~~in the county jail~~ for not more than two years, or ~~by both such fine and imprisonment.~~
2. Any person who violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any 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 permit condition, rule, order, limitation, or other applicable requirement implementing this chapter,~~ or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter; ~~must or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter,~~ upon conviction, ~~be punished by is subject to~~ a fine of not more than ten thousand dollars per day per violation, or by imprisonment ~~in~~

~~the county jail for not more than six months, or by both such fine and imprisonment.~~

4. Any person who violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing this chapter, ~~and any person who violates any order issued by the department,~~ is subject to a civil penalty not to exceed ten thousand dollars per day ~~of such~~ per violation.

~~Nothing in this chapter may be construed to deny use of the remedy of injunctive relief where it is deemed appropriate.~~

5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

SECTION 2. AMENDMENT. Section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

61-28-08. Penalties - Injunctions.

1. Any person who willfully violates this chapter, ~~or any permit condition or, rule, order, limitation, or other applicable requirement~~ implementing this chapter ~~shall be punished by,~~ is subject to a fine of not more than ~~twenty five~~ ten thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this ~~paragraph~~ subsection, punishment shall be by a fine of not more than ~~fifty~~ twenty thousand dollars per day ~~of~~ per violation, or by imprisonment ~~in the county jail~~ for not more than two years, or ~~by~~ both.
2. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly makes any 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 permit condition, rule, order, limitation, or other applicable requirement implementing this chapter,~~ or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter ~~or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter,~~ ~~shall upon conviction, be punished by~~ is subject to a fine of not more than ~~ten~~ five thousand dollars per day per violation or by imprisonment ~~in the county jail~~ for not more than six months, or ~~by~~ both.
3. 4. Any person who violates this chapter, or any permit condition ~~or~~, rule, order, limitation, or other applicable requirement implementing ~~the~~ this chapter, ~~and any person who violates any order issued by the~~

~~department shall be~~ is subject to a civil penalty not to exceed ~~ten~~ five thousand dollars per day ~~of such~~ per violation.

4. 5. ~~The~~ Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person ~~violating~~ to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, regulation, or order issued thereunder, limitation, or other applicable requirement implementing this chapter.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 241

SENATE BILL NO. 2365 (Senators Wanzek, Mutch, Naaden) (Representative Brusegaard)

ODOR REGULATION

AN ACT to create and enact a new section to chapter 23-25 of the North Dakota Century Code, relating to state department of health odor readings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-25 of the North Dakota Century Code is created and enacted as follows:

Regulation of odors - Rules.

1. In areas located within a city or the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that measures seven odor concentration units or higher outside the property boundary where the discharge is occurring.
2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:
 - a. Within one hundred feet [.80 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established; or
 - b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement.
3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the state department of health, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance

with a nutrient management plan approved by the state department of health. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.

5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the state department of health has established a specific limitation by rule.
6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 242

SENATE BILL NO. 2045

(Legislative Council)

(Insurance and Health Care Committee)

PUBLIC HEALTH LAW REVISION

AN ACT to create and enact chapter 23-35 of the North Dakota Century Code, relating to public health law; to amend and reenact subsection 2 of section 23-01-05, subsection 2 of section 23-07.6-01, subdivision h of subsection 1 of section 40-01.1-04, section 54-52-02, and subsection 13 of section 58-06-01 of the North Dakota Century Code, relating to references to public health law and the powers and duties of boards of township supervisors; to repeal chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter 23-14 of the North Dakota Century Code, relating to public health law; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-01-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Hold ~~the several~~ public health unit boards of health responsible for the enforcement of state ~~regulations~~ rules, serve in an advisory capacity to ~~the several~~ public health unit boards of health ~~in the counties, cities, and townships of this state~~, and provide for coordination of health activities.

SECTION 2. AMENDMENT. Subsection 2 of section 23-07.6-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Local board" means a board of health as ~~described~~ defined under section ~~23-05-04~~ or a district board of health as described under section 23-14-04 23-35-01.

SECTION 3. Chapter 23-35 of the North Dakota Century Code is created and enacted as follows:

23-35-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board of health" means a district, county, or city board of health.
2. "Department" means the state department of health.
3. "Governing body" means, as applicable, a city commission, city council, board of county commissioners, or joint board of county commissioners.
4. "Health district" means an entity formed under section 23-35-04 or 23-35-05.
5. "Joint board of county commissioners" means the boards of county commissioners of two or more counties acting together in joint session.

6. "Local health officer" means the health officer of a public health unit.
7. "Public health department" means a city or county health department formed under this chapter.
8. "Public health unit" means the local organization formed under this chapter to provide public health services in a city, county, or designated multicounty or city-county area. The term includes a city public health department, county public health department, and a health district.

23-35-02. Public health units. All land in the state must be in a public health unit before January 1, 2001. The health council may issue rules defining the core functions a public health unit shall undertake.

23-35-03. Boards of health.

1. The department shall advise boards of health.
2. A city's or county's governing body may establish a public health unit by creating and appointing a board of health, which in the case of a city, may be composed of the city's governing body. A board of health must have at least five members.
 - a. In the case of a board of health created by a joint board of county commissioners, each county in the health district must have at least one representative on the board; each county of over fifteen thousand population must have an additional representative for each fifteen thousand population or major fraction of that number; and in a health district of fewer than five counties, each county must have at least one representative on the district board of health, and the additional representatives selected to constitute the minimum five-member board must be equitably apportioned among the counties on a population basis.
 - b. In the case of a joint city-county health district composed of only one county and having at least one city over fifteen thousand population, each city having a population over fifteen thousand must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, and the remaining population of the county, exclusive of the populations of cities with more than fifteen thousand each, must have a representative on the district board of health for each fifteen thousand population or major fraction of that number, or at least one member if the remaining population is less than fifteen thousand.
3. The initial members of any board of health appointed by a governing body must be appointed for terms as follows: at least one for one year, one for two years, one for three years, one for four years, and one for five years. If a board has more than five members, the members must be appointed for staggered terms. All subsequent appointments are for five-year terms. Each board member shall serve until a successor is appointed and qualified. If a vacancy occurs, the appointing government authority shall appoint a member for the remainder of the unexpired term. Each appointee shall qualify by filing the oath of office. A board of health may not be all male or all female. If the members of

a governing body serve on a board of health or if an employee of a governing body serves on a board of health, this subsection does not apply to those governing body members and that employee.

4. A board of health shall meet at least quarterly. Special meetings may be held at any time at the call of the president.
5. Except if the governing body serves as the board of health, at the first meeting after appointment, and annually, the members of a board of health shall organize by electing a president, a vice president, and other officers the board considers necessary. If there is a treasurer and the treasurer is not a public employee, the treasurer must be bonded in an amount fixed by the board. If the health officer is not appointed to the board, the health officer does not have a vote in matters of the board. The office of secretary and treasurer may be combined.
6. Any board member who is not a public employee may be compensated at a rate not exceeding sixty-two dollars and fifty cents per day, but for no more than twenty-five days per year, and may be reimbursed for expenses incurred in the manner and in an amount not exceeding the amount provided for a state officer.

23-35-04. Health districts - Formation - Contracting for services.

1. Upon the adoption of a resolution, the governing body may form a multicounty or a city-county health district.
2. Notwithstanding this chapter, in a county without a countywide public health unit, the board of county commissioners, upon adoption of a resolution, may contract with a city that has a public health department to provide health services to the county and in the cities throughout the county which do not have a public health unit. The contract must comply with chapter 54-40.3. When a contract is executed, any provision of this chapter relating to organizing district boards of health does not apply, and the city public health department shall exercise all the necessary powers and duties of a public health unit under this chapter. The department shall treat a county with a contract under this subsection as a public health unit.

23-35-05. Health districts - Expansion - Merger.

1. Upon adoption of a resolution, a county that is not included in any public health unit may request inclusion as a part of an existing health district. Upon receipt of a request to become part of an existing health district, the district board of health shall consider the request and, if the board approves the request by a majority vote, shall submit the matter to each county in the health district. If a majority of the counties approve the request by a majority vote, the requesting county becomes a part of the health district.
2. Upon expansion of a health district under this section, the number of board of health members must be adjusted to allow the added county the same proportion of members allowed to member cities and counties of the existing health district as determined under this chapter.

3. Any two or more health districts may merge into a single health district upon a majority vote of the respective boards of health and a majority vote of the governing body of each county. The assets of each merging health district become the property of the newly created health district. Board of health membership of a new health district must be determined under section 23-35-03, unless otherwise decided by the board. The new health district maintains the same authority and powers of the previous health districts. The mill levy of the newly created health district is not limited by the old mill levy but may not exceed the amount allowed under section 23-35-07.
4. Upon adoption of a health district plan by two or more counties, the joint board of county commissioners shall appoint a district board of health.

23-35-06. Health districts - Dissolution - Withdrawal.

1. If a health district has been in operation for two years, the district may be dissolved as provided for under this section. If a petition is filed with the county auditor of each county of a health district which is signed by qualified electors of that county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of dissolution must be presented to the qualified electors in each county in the district at the next election held in each county in the district. If a majority of the votes cast on the question in a majority of the counties favor dissolution, the health district is dissolved on the second January first following the election. If a majority of the votes cast on the question in a majority of the counties are against dissolution, no other election on this issue may be held for two years.
2. If a health district has been in operation for two years, any county may withdraw from the district as provided under this section. If a petition is filed with the withdrawing county's auditor which is signed by qualified electors of the county equal to ten percent or more of the votes cast in that county at the last general election, an election on the question of withdrawal must be presented to the qualified electors in the county at the next election in the county. If a majority of the votes cast on the question favor withdrawing from the district, the county is withdrawn from the district on the second January first following the election. If a majority of the votes cast on the question are against withdrawal, no other election on this issue may be held for two years.

23-35-07. Health district funds.

1. A district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the assessed valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies

of the counties. The budget may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.

2. The district board of health, or the president and secretary of the board when authorized or delegated by the board, shall audit all claims against the health district fund. The treasurer shall pay all claims from the health district fund. The district board of health shall approve or ratify all claims at the board's quarterly meetings.

23-35-08. Boards of health - Powers and duties. Except when in conflict with a local ordinance or a civil service rule within a board of health's jurisdiction, each board of health:

1. Shall keep records and make reports required by the department.
2. Shall prepare and submit a public health unit budget.
3. Shall audit, allow, and certify for payment expenses incurred by a board of health in carrying into effect this chapter.
4. May accept and receive any contribution offered to aid in the work of the board of health or public health unit.
5. May make rules regarding any nuisance, source of filth, and any cause of sickness which are necessary for public health and safety.
6. May establish by rule a schedule of reasonable fees that may be charged for services rendered. Services may not be withheld due to an inability to pay any fees established under this subsection.
7. May make rules in a health district or county public health department, as the case may be, and in the case of a city public health department may recommend to the city's governing body ordinances for the protection of public health and safety.
8. May adopt quarantine and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.
9. May make and enforce an order in a local matter if an emergency exists.
10. May inquire into any nuisance, source of filth, or cause of sickness.

11. Except in the case of an emergency, may conduct a search or seize material located on private property to ascertain the condition of the property as the condition relates to public health and safety as authorized by an administrative search warrant issued under chapter 29-29.1.
12. May abate or remove any nuisance, source of filth, or cause of sickness when necessary to protect the public health and safety.
13. May supervise any matter relating to preservation of life and health of individuals, including the supervision of any water supply and sewage system.
14. May isolate, kill, or remove any animal affected with a contagious or infectious disease if the animal poses a material risk to human health and safety.
15. Shall appoint a local health officer.
16. May employ any person necessary to effectuate board rules and this chapter.
17. If a public health unit is served by a part-time local health officer, the board of health may appoint an executive director. An executive director is subject to removal for cause by the board of health. The board of health may assign to the executive director the duties of the local health officer, and the executive director shall perform these duties under the direction of the local health officer.
18. May contract with any person to provide the services necessary to carry out the purposes of the board of health.
19. Shall designate the location of a local health officer's office and shall furnish the office with necessary equipment.
20. May provide for personnel the board of health considers necessary.
21. Shall set the salary of the local health officer, the executive director, and any assistant local health officer and shall set the compensation of any other public health unit personnel.
22. Shall pay for necessary travel of the local health officer, the local health officer's assistants, and other personnel in the manner and to the extent determined by the board.

23-35-09. Abatement and removal of nuisance, source of filth, and cause of sickness.

1. If necessary for the protection of public health to abate or remove any nuisance, source of filth, or cause of sickness, the board of health shall serve notice on the owner or occupant of the property requiring the owner or occupant, at the owner's or occupant's expense, to remove or abate the nuisance, source of filth, or cause of sickness within a time specified by the board, not exceeding thirty days. If the owner or occupant fails to comply with the notice to remove or abate or if the nuisance, source of filth, or cause of sickness exists on property of

nonresident owners or on property the owners of which cannot be found, the board of health may remove or destroy the nuisance, source of filth, or cause of sickness at the expense of the appropriate city or county, which shall charge the expense against the lot, piece, or parcel of land on which the work is done.

2. The governing body of the city or county may levy and assess against the property the cost of the removal or destruction of a nuisance, source of filth, or cause of sickness, and the member of the governing body who is responsible for streets shall return and file the assessment in the office of the auditor of the city or county. The auditor shall publish, in the same manner as provided under section 40-22-06, the amount of the assessment together with a notice of the time and location the governing body will meet to consider the approval of the assessment. Each assessment must be recorded, collected, and paid as other taxes are recorded, collected, and paid.
3. If a board of health determines it necessary for the preservation of public health to enter any building within the board's jurisdiction to examine, destroy, remove, or prevent any nuisance, source of filth, or cause of sickness and is refused entrance into the building, the local health officer, or a designated agent of the local health officer, may make a complaint under oath to a district judge within the jurisdiction of the board of health stating the facts in the case which the local health officer, or a designated agent of the local health officer, has knowledge. If a warrant is issued and if requested by a board of health, a county sheriff or city police department shall provide assistance to that public health unit in any action to search or seize material in or on any private property to destroy, remove, or prevent the nuisance, source of filth, or cause of sickness, if there is probable cause to believe a public health hazard or public health nuisance exists on or in that property, and shall carry out any other preventive measures the public health unit requests. For purposes of this subsection, a request from a public health unit means a request for assistance which is specific to a public health nuisance and is not a continuous request for assistance.

23-35-10. District boards of health - Acquiring and disposing of property.

1. A district board of health may acquire by lease, purchase, construction, or gift for district health office use and control property for all purposes authorized by law or necessary to the exercise of the powers granted in this chapter. The district board of health may finance the purchase, construction, or equipping of a building on owned or leased property for the use and purpose for which the health district is formed and carry out the functions of the health district in either of the following ways:
 - a. The district board of health may issue and sell bonds in an aggregate amount not exceeding two times the authorized tax revenues of the district for the year in which the bonds are to be issued and sold; or
 - b. The district board of health may mortgage or otherwise encumber the building constructed in an amount not exceeding two times the authorized tax revenue of the district for the year in which the construction is to be commenced.

2. Bonds issued under this section and income under this section are exempt from any taxes except inheritance, estate, and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as under this section, is neither an obligation or an indebtedness of this state nor of the counties or cities comprising the district board of health. Any indebtedness under this section may be foreclosed in any manner provided by law. The district board of health may convey or transfer property acquired as provided under this section. If, upon dissolution of a health district, any balance remains in the health district fund after all obligations have been paid, the balance must be transferred to the general fund of the counties comprising the health district in proportion to the assessed valuation most recently used in preparing the health district budget under this chapter. If any county in the district withdraws from a health district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services remain the property of the district for use elsewhere in the district.

23-35-11. Budget. A city, county, or health district, as the case may be, shall prepare a county public health unit budget for the next fiscal year at the time and in the manner a county budget is adopted and submit the budget to the board of county commissioners for approval, shall prepare a city public health unit budget for the next fiscal year and submit the budget to the governing body of the city for approval, or shall prepare a district budget as provided under this chapter. In the case of a city board of health, the board shall certify the expenses to the governing body for payment out of the general fund of the city. The governing body or auditor shall audit any expenses incurred in quarantining or disinfecting any property outside an incorporated city and shall pay for any expenses out of the general fund of the county.

23-35-12. Local health officers.

1. A local health officer shall serve a term of five years, subject to removal for cause by the governing body or the district board of health. The health officer must be a physician licensed to practice medicine in this state and need not be a resident of the public health unit. The appointee shall qualify by filing the constitutional oath of office in the manner provided for the members of the board of health. If the state health officer finds a local health officer is failing to perform the duties of the position, the state health officer may report the case to the governing body of the appropriate city, county, or district board of health. At the next meeting of the city's or county's governing body or district board of health, the governing body or district board of health shall declare the office vacant and may appoint another physician to fill the unexpired term, or shall report the matter to the board of health, and the board shall declare the office vacant and promptly shall appoint another physician to fill the unexpired term.
2. Within the jurisdiction of the board of health, a local health officer:
 - a. Shall keep a record of the official acts of the local health officer.
 - b. Shall enforce every law and rule relating to preservation of life and health of individuals.

- c. May exercise the powers and duties of the board of health under the supervision of the board of health.
 - d. May make sanitary inspections of any place within the jurisdiction in which the local health officer finds a probability a health-threatening condition exists.
 - e. May investigate public water and ice supplies suspected of contamination and initiate necessary condemnation proceedings.
 - f. May enforce school cleanliness; inspect any school that may be overcrowded, poorly ventilated, or unsanitary; and, when necessary, report cases of any unsanitary or unsafe school building to the board of health for investigation.
 - g. May take any action necessary for the protection of public health and safety.
 - h. May determine when quarantine and disinfection is necessary for the safety of the public. The local health officer may establish quarantines consistent with procedures provided under chapter 23-07.6 and perform any acts required for disinfection when necessary.
 - i. Shall maintain an office within the jurisdiction of the public health unit consistent with any terms of appointment.
 - j. May select and discharge any assistant health officer in the public health unit, consistent with any terms of appointment.
3. A local health officer may request the assistance of a county sheriff or city health department in the same manner as provided under subsection 3 of section 23-35-09.

23-35-13. Penalty. A person who violates any order, ordinance, or rule prescribed by any board of health or health officer or any rule adopted under this chapter is guilty of a class B misdemeanor.

¹⁷⁹ **SECTION 4. AMENDMENT.** Subdivision h of subsection 1 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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

¹⁷⁹ Section 40-01.1-04 was also amended by section 9 of House Bill No. 1035, chapter 164, and section 65 of House Bill No. 1275, chapter 278.

pursuant to ~~sections 23-14-01.1 through 23-14-01.6~~ chapter 23-35, 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 chapter 40-49.1, or multicounty social service districts pursuant to chapter 50-01.1.

SECTION 5. AMENDMENT. Section 54-52-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a ~~county and city~~ city-county health district formed under ~~section 23-14-01.1~~ chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not eligible for duplicate coverage.

SECTION 6. AMENDMENT. Subsection 13 of section 58-06-01 of the North Dakota Century Code is amended as follows:

13. To ~~be and act as a~~ request assistance from a county or district board of health or the state department of health.

SECTION 7. REPEAL. Chapters 23-03, 23-04, 23-05, section 23-07-04, and chapter 23-14 of the North Dakota Century Code are repealed.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 243

HOUSE BILL NO. 1185

(Representatives Price, Rose)

(Senators DeMers, Kilzer, Thane)

(At the request of the State Department of Health)

RABIES CONTROL

AN ACT to create and enact chapter 23-36 of the North Dakota Century Code, relating to rabies control; to repeal sections 23-01-18 and 23-01-19 of the North Dakota Century Code, relating to rabies control; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-36 of the North Dakota Century Code is created and enacted as follows:

23-36-01. Definitions. As used in this chapter:

1. "Bite" means any penetration of the skin by an animal's teeth.
2. "Clinical symptoms of rabies" means physical signs or symptoms, or animal behavior that would lead a reasonably prudent veterinarian to conclude that a diagnosis of possible rabies is indicated.
3. "Confinement" means separation of an animal from humans, other than the owner, caretaker, a member of the owner's family, or the caretaker's employees, and from other animals, by means of a building, cage, fence, pen, or other secure enclosure that restricts the animal's movement within definite boundaries and prevents the animal from exiting the enclosure.
4. "Department" means the state department of health.
5. "Domestic animal" means any dog [*canis familiaris*], cat [*felis domestica*], horse, mule, bovine animal, sheep, goat, bison, llama, alpaca, swine, or captive-bred, currently vaccinated ferret.
6. "Emergency" means a situation in which an immediate search and seizure of an animal is necessary and authorized by section 8 of article I of the Constitution of North Dakota and the fourth amendment to the Constitution of the United States because of a risk of death or serious bodily injury to a human or another animal.
7. "Exposure to rabies" means any bite or scratch, and includes any nonbite contact of an individual with an animal, animal tissue, or fluids that are defined as an exposure to rabies by the federal advisory committee on immunization practices referred to in Public Law No. 103-66 [107 Stat. 636, 642; 42 U.S.C. 1396s(e)].
8. "Impound" means quarantining an animal at a public pound or an animal facility of a licensed veterinarian.

9. "Law enforcement officer" has the meaning of that term as set forth in section 12.1-01-04.
10. "Quarantine" means confinement in a fixed area that keeps a possibly rabid animal secure and isolated from all other animals so there is no reasonable possibility of rabies being mechanically transmitted from the confined area.
11. "Vaccinated animal" means an animal that has been vaccinated in compliance with the compendium of animal rabies control issued by the national association of state public health veterinarians.
12. "Wild mammal" means any animal of the order mammalia which is not a domestic animal and includes any hybrid of a domestic animal and a mammal regardless of whether the animal is:
 - a. Wildlife as defined in section 20.1-01-02; or
 - b. Held in private ownership.

23-36-02. Policy - Local authority.

1. The department shall establish a rabies control program that must place primary emphasis on human exposure to rabies.
2. The department shall consider national peer-reviewed recommendations for the control of rabies during the development of the department's rabies control program.
3. This chapter may not be construed to limit the authority of any local agency to control or prevent rabies, and, upon request, the department may assist any local agency in rabies control and prevention activities, but the fact that possible rabies exposure is subject to a local ordinance does not limit the department's authority under this chapter.
4. This chapter may not be construed to limit a law enforcement officer's ability to immediately seize, humanely kill, and request the testing of an animal for rabies if emergency circumstances exist that endanger human health or safety.

23-36-03. Enforcement authority.

1. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any animal if the state health officer, or the state health officer's designee, has probable cause to believe the animal presents clinical symptoms of rabies.
2. The department, or an agency acting on the department's behalf, may promptly seize and humanely kill, impound at the owner's expense, or quarantine any wild mammal that is not currently vaccinated for rabies by a vaccine approved for use on that species by the national association of state public health veterinarians, inc., or any stray or unwanted domestic animal, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.

3. The department, or an agency acting on the department's behalf, may promptly seize and quarantine, or impound at the owner's expense, any dog, cat, or currently vaccinated ferret for a period of ten days, or any other domestic animal for a period not exceeding six months, if the state health officer, or the state health officer's designee, determines the animal is a threat to human life or safety due to the possible exposure of an individual to rabies.
4. If an animal is humanely killed under this section, then at the request of the state health officer, or the state health officer's designee, the animal's brain must be tested for rabies by the state microbiology laboratory of the department if there is possible human exposure to rabies and by the North Dakota veterinary diagnostic laboratory in any other case.
5. If an animal that has bitten or otherwise exposed an individual or another animal is not seized for testing, a law enforcement officer with jurisdiction over the place where the animal is located may determine whether to impound or quarantine the animal under subsection 3 and which method of confinement to use.
6. A licensed veterinarian shall examine, at the owner's expense, a confined animal on the first and last day of the animal's confinement and, at the request of the department or a local public health unit, at any other time during confinement.

23-36-04. Administrative search warrant. Except in the case of an emergency, the department, or another state or local agency acting on the department's behalf, may seize an animal located on private property only as authorized by an administrative search warrant issued under chapter 29-29.1. A warrant to seize an animal under this section must include a request to quarantine, impound, or humanely kill and test the animal.

23-36-05. Assistance of state and local agencies. If a warrant is issued under section 23-36-04 and upon written request of the department, the game and fish department, the state veterinarian, or the wildlife services program of the United States department of agriculture animal and plant health inspection service shall provide assistance to the department in any action to seize, impound, quarantine, or test an animal suspected of having rabies or that has possibly exposed an individual to rabies, and shall carry out any other preventive measures the department requests. For purposes of this section, a request from the department means only a request for assistance as to a particular and singular suspicion of exposure to rabies and does not constitute a continuous request for assistance.

The duty of the game and fish department to cooperate and provide assistance under this section is limited to cases involving a wild mammal and is applicable only if no other agency is available for law enforcement or animal control services.

23-36-06. Payment for postexposure treatment. The department may provide, at no cost, rabies postexposure vaccine to an individual possibly exposed to rabies if the department determines the individual is financially unable to pay for the postexposure vaccine treatment.

23-36-07. Penalty for violation of order or interference. A person is guilty of an infraction if the person:

1. Conceals, releases, or removes an animal from the place where the animal is located with intent to impair that animal's availability for seizure under that warrant or order while the person is under the belief that a search warrant or judicial order is pending or is about to be issued for the seizure of an animal;
2. Fails to impound or quarantine an animal for the period and at the place specified after having been ordered to impound or quarantine the animal; or
3. Recklessly hinders any state or local official in any pending or prospective action to seize, impound, quarantine, or test an animal under this chapter.

23-36-08. Limitation on liability. Subject to any other requirements of section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover an amount up to the replacement value of the animal, if the owner establishes that before the animal was seized and tested for rabies under this chapter, the state health officer, or the state health officer's designee, knew or recklessly failed to determine that the animal, at the time of the exposure, was lawfully owned and licensed and that:

1. The animal was a wild mammal, and, at the time of the exposure, was currently vaccinated with a vaccine approved for use on an animal of that species by the national association of state public health veterinarians, inc.;
2. The animal had not bitten, scratched, or otherwise possibly exposed a person to rabies; or
3. The animal was a domestic animal and there was not probable cause to believe the animal was rabid.

23-36-09. Owner's responsibility.

1. The owner of an animal is liable for the cost of quarantine and veterinary services, and for the cost of any postexposure treatment received by an individual who is possibly exposed to rabies by the owner's animal, if the animal is not:
 - a. Licensed or registered as required by any state or local law or rule applicable to that species; or
 - b. Confined or vaccinated as required by any state or local law or rule applicable to that species.
2. This section may not be construed to limit any other liability of an animal owner for injury or damage caused by the owner's animal.

SECTION 2. REPEAL. Sections 23-01-18 and 23-01-19 of the 1997 Supplement to the North Dakota Century Code are repealed.

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

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 244

HOUSE BILL NO. 1404

(Representatives Wald, Grosz, Schmidt)
(Senators Christmann, Kroeplin, B. Stenehjem)

PETROLEUM RELEASE COMPENSATION

AN ACT to create and enact a new subdivision to subsection 13 of section 2 of chapter 299 of the 1991 Session Laws as amended by section 1 of chapter 286 of the 1993 Session Laws and five new subsections to section 27 of chapter 299 of the 1991 Session Laws, relating to the definition of tank and third-party judgments under the petroleum release compensation fund; to amend and reenact sections 17, 19, and 33 of chapter 299 of the 1991 Session Laws, relating to the petroleum release compensation fund; to repeal section 29 of chapter 299 of the 1991 Session Laws, relating to petroleum spill reports; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 13 of section 2 of chapter 299 of the 1991 Session Laws as amended by section 1 of chapter 286 of the 1993 Session Laws is created and enacted as follows:

An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this Act.

SECTION 2. AMENDMENT. Section 17 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 17. Registration fee. An owner or operator of a tank shall pay an annual registration fee of ~~seventy-five~~ fifty dollars for each aboveground tank ~~and one hundred twenty-five dollars for each~~ or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than five million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. An owner or operator of a tank that was required to be registered by law on or before July 1, 1999, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 3. AMENDMENT. Section 19 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 19. Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken

corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial ~~of~~ or full reimbursement under section 18 of this Act. An owner or operator who is a first-party claimant may be reimbursed only for releases discovered and reported after the effective date of this Act costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 4. Five new subsections to section 27 of chapter 299 of the 1991 Session Laws are created and enacted as follows:

The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund, excluding claims for punitive damages or damages for criminal acts.

The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

Liability of the fund to third parties may not exceed, per person, the maximum liability allowed per person under subsection 2 of section 32-12.2-02. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 18 of chapter 299 of the 1991 Session Laws.

A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.

In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 5. AMENDMENT. Section 33 of chapter 299 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 33. EXPIRATION DATE. This Act is effective through ~~June 30, 1999~~ July 31, 2009, and after that date is ineffective.

SECTION 6. REPEAL. Section 29 of chapter 299 of the 1991 Session Laws is repealed.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 245

SENATE BILL NO. 2160

(Transportation Committee)

(At the request of the Department of Transportation)

DOT CONSULTING SERVICES AND CONSTRUCTION CONTRACTS

AN ACT to amend and reenact sections 24-02-01.5, 24-02-08, and 24-02-16 of the North Dakota Century Code, relating to department of transportation engineering consulting services and construction contracts; and to repeal section 24-03-03 of the North Dakota Century Code, relating to the annual construction program of the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-01.5 of the 1997 Supplement to 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. 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, 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 remain in effect until they are specifically amended or repealed by the department.

SECTION 2. AMENDMENT. Section 24-02-08 of the North Dakota Century Code is amended and reenacted as follows:

24-02-08. Engineering consulting services - Coordinator of highway, road, and street program within state. The director ~~is authorized to~~ may provide consulting engineering services; upon request; ~~to~~ of any governmental unit.

The director has the authority and responsibility for the coordination of the total highway, road, and street program within this state, including the designation of systems, which ~~he~~ the director may functionally classify as to the types of service, and the development of construction standards as hereinafter provided for; ~~and shall review the annual programs for each of the major systems to ensure coordination of planning and general conformity with the law. To obtain coordination, programs for the road systems of the counties and cities must be initiated by the respective county and city authorities and approved by the director.~~

SECTION 3. AMENDMENT. Section 24-02-16 of the North Dakota Century Code is amended and reenacted as follows:

24-02-16. Basis of contracts for construction work. The director may request bids and award contracts for construction work requiring the contractor to furnish all equipment, labor, materials, and supplies for each particular contract or project, or requiring the director to furnish and provide the ~~said~~ contractor with ~~such~~ materials and supplies as ~~he~~ the director may elect. ~~In the event that~~ If the director elects to provide materials and supplies for any project or construction work, such election must be made at the time of the adoption of the construction program, and the director shall notify the office of management and budget of the fact that the director has elected to furnish the materials and supplies. The office of management and budget may either exempt the purchase and allow the director to request and let bids, and make the purchase, or ~~it~~ the office of management and budget may handle the bidding and purchasing through its central purchasing agency. Either the office of management and budget or the director shall request proposals or bids for the total and aggregate of ~~such~~ the materials and supplies for any and all ~~such~~ projects or construction work according to the class, type, and nature of ~~such~~ the materials and supplies, and may ~~proceed to~~ award a contract or contracts therefor upon ~~such~~ a basis ~~as is~~ deemed efficient and economical, whether upon the basis of delivery to the construction project directly or to a central storehouse or storehouses maintained by the state. ~~Such~~ The materials and supplies ~~so~~ purchased by the office of management and budget or the department of transportation may be delivered to the project or construction work without expense to the contractor doing ~~such~~ the construction work, or may be sold to ~~him~~ the contractor at cost and made to constitute a part of ~~such~~ the construction cost, as the director may elect.

SECTION 4. REPEAL. Section 24-03-03 of the North Dakota Century Code is repealed.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 246

HOUSE BILL NO. 1128

(Transportation Committee)

(At the request of the Department of Transportation)

CENTRAL VEHICLE MANAGEMENT SYSTEM

AN ACT to amend and reenact section 24-02-03.3 of the North Dakota Century Code, relating to the central vehicle management system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-03.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-03.3. Central management system for all state-owned licensed motor vehicles.

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system.
2. The director may enter into an agreement with a state employee who has a disability requiring a specially-equipped vehicle to pay a mileage rate greater than the rate established in section 54-06-09 for the employee's use of the employee's specially-equipped motor vehicle while conducting state business. The rate must be based on the rate provided in section 54-06-09, increased by the actual cost per mile caused by the special equipment, and may not exceed the cost associated with the special equipment expressed as the new value plus the depreciated fair market value in eight years divided by two, divided by forty thousand miles.
3. Each entity required to use the system shall submit records of the operation of each vehicle as directed by the director.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 247

SENATE BILL NO. 2267

(Senators B. Stenehjem, Christmann, Tomac)
(Representatives Grande, Hanson, Henegar)

SPECIAL ROAD COMMITTEE AND FUND

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to the special road committee; to amend and reenact subsection 3 of section 24-02-37 of the North Dakota Century Code, relating to the special road fund; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 24-02-37 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. ~~Any~~ The state treasurer shall deposit forty percent of the income derived from the deposit of the moneys must be retained in the state highway interest-bearing account in a special interest-bearing account in the state treasury known as the special road fund. The special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the special road committee. A political subdivision or state agency may request funds from the special road fund by applying to the committee on forms designated by the committee. The committee may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund. Any moneys in the fund not obligated by the special road committee on June thirtieth of each odd-numbered year must revert to the state highway fund.

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Special road committee. The special road committee consists of one member of the senate and one member of the house of representatives appointed by the chairman of the legislative council, the director of the game and fish department, the director of the parks and recreation department, and the director of the department of transportation. The director of the department of transportation is chairman of the committee. The committee must meet at the call of the director to review requests for funding from the special road fund. The committee shall decide which project requests will receive funding. The director shall provide staff services to the committee. The members of the committee who are members of the legislative assembly are entitled to compensation from the department of transportation, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses

incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 3. EFFECTIVE DATE. This Act becomes effective July 1, 1999.

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

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 248

HOUSE BILL NO. 1310

(Representatives Weisz, DeKrey, Devlin, Schmidt)
(Senators Fischer, Klein)

HIGHWAY CONSTRUCTION TO PERMIT WATER FLOW

AN ACT to amend and reenact sections 24-03-06, 24-03-08, and 24-06-26.1 of the North Dakota Century Code, relating to construction of highways to permit a natural flow of water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-03-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-03-06. Method of construction of highway ditches. ~~Any and all~~ All highways ~~of any kind hereafter~~ constructed or reconstructed by the department, any board of county commissioners, ~~any~~ board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into ~~such~~ the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where ~~such~~ the highway or highways are constructed in accordance with ~~scientific highway construction and engineering~~ the stream crossing standards prepared by the department and the state engineer so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. In the construction of highways; ~~as herein provided~~, the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the state engineer may not be obstructed, but ~~such~~ the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain. The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

SECTION 2. AMENDMENT. Section 24-03-08 of the North Dakota Century Code is amended and reenacted as follows:

24-03-08. Determinations of surface water flow and appropriate highway construction. Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the state ~~water commission~~ engineer, upon petition of the majority of landowners of the area affected; or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the maximum quantity of water, in terms of second feet, which such watercourse or draw may be design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the

department and the state engineer. When ~~such~~ the determination has been made by the state ~~water commission~~ engineer, ~~it is the duty of~~ the department ~~or~~, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of ~~such~~ the determination, ~~to~~ shall install a culvert or bridge of sufficient capacity to permit ~~such maximum quantity of~~ the water to flow freely and unimpeded through ~~such~~ the culvert or under ~~such~~ the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

SECTION 3. AMENDMENT. Section 24-06-26.1 of the North Dakota Century Code is amended and reenacted as follows:

24-06-26.1. Township road and drainage construction standards. Whenever the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface water flow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking ~~such~~ the construction or reconstruction shall give notice to the boards of township supervisors or township overseers of highways in all townships affected by ~~such~~ the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction ~~which that~~ changes or increases the flow of surface waters shall cooperate in the ~~determination of uniform construction standards to be adopted by all townships affected and shall cooperate in~~ such construction projects expending on any portion of ~~such~~ the projects ~~such~~ the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream crossing standards prepared by the department and the state engineer. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the state engineer.

Approved April 9, 1999
Filed April 9, 1999

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 249

SENATE BILL NO. 2266

(Senators St. Aubyn, Fischer, DeMers)

(Representatives Delmore, Nottestad)

COMMITTEE ON PROTECTION AND ADVOCACY MEMBERSHIP

AN ACT to amend and reenact section 25-01.3-02 of the North Dakota Century Code, relating to the membership of the committee on protection and advocacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-02. Committee on protection and advocacy.

1. The committee on protection and advocacy consists of seven members who broadly represent or are knowledgeable about the needs of the persons served by the protection and advocacy project. The governor shall appoint two members on August 1, 1995. The legislative council shall appoint one member from each house of the legislative assembly on August 1, 1995. The governing board of the North Dakota association for retarded citizens shall appoint one member of the association on August 1, 1995. The governing board of people first of North Dakota shall appoint one member of the association on August 1, 1995. The mental health consumer advocates of North Dakota, inc., shall appoint one of its members on August 1, 1995. The members appointed by the North Dakota association for retarded citizens, people first of North Dakota, and the mental health consumer advocates of North Dakota, inc., must include individuals with disabilities who are eligible for services or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who are eligible for services. Each member appointed by the governor and the legislative council shall serve for a term of two years and until a successor is appointed. The remaining three members shall serve a term of three years and until a successor is appointed. A member may not serve more than six consecutive years. If any vacancy occurs on the committee, the appointing authority shall appoint an individual to fill the vacancy for the remainder of the term, but if the federal government designates a member ineligible, the original appointing body shall fill the vacancy for the unexpired term in a manner that is consistent with federal eligibility requirements. Any vacancy on the committee must be filled within sixty days after the date on which the vacancy occurs. The committee is

responsible for and shall adopt rules for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project. The committee shall develop a formal process to review complaints from providers or other persons concerning protection and advocacy activities. The committee in its capacity of supervising and directing the project shall operate independently of the governor or and any state agency that provides treatment, services, or habilitation to persons with ~~developmental~~ disabilities or mental illness illnesses.

2. The committee consists of seven members who:

- a. Meet federal eligibility requirements for membership;
- b. Do not provide direct treatment, nonadvocacy services, or habilitation to address a need related to a disability or a mental illness;
- c. Do not hold an interest, whether as an officer, director, employee, or otherwise, in an entity that provides direct treatment, nonadvocacy services, or habilitation to address a need related to a disability or a mental illness; and
- d. (1) Broadly represent persons served by the protection and advocacy project or
(2) Are knowledgeable about the needs of persons served by the protection and advocacy project.

3. The appointments and terms of committee members are as follows:

- a. The governor shall appoint two committee members for two-year terms, beginning on August one in each odd-numbered year.
- b. The legislative council shall appoint one member from each house of the legislative assembly for two-year terms, beginning on August one in each odd-numbered year.
- c. The governing board of the arc of North Dakota shall appoint one committee member for a three-year term, beginning on August one in each year that is evenly divisible by three.
- d. The governing board of people first of North Dakota shall appoint one committee member for a three-year term, beginning on August one in each year that is evenly divisible by three.
- e. The governing board of the mental health association in North Dakota shall appoint one committee member for a three-year term, beginning on August one in each year that is evenly divisible by three.

4. Each committee member appointed by the arc of North Dakota, people first of North Dakota, or the mental health association in North Dakota must be:

- a. An individual with disabilities who is eligible for services; or

- b. A parent, family member, guardian, advocate, or other authorized representative of an individual with disabilities who is eligible for services.
5. A member may not serve more than six consecutive years.
6. A member's term ends on July thirty-first in the last year of the term and a member shall serve until a successor has been appointed.
7. If any vacancy occurs on the committee, the appointing authority shall appoint an individual to fill the vacancy for the remainder of the term. If the federal government designates a member ineligible, the appointing body shall fill the vacancy for the remainder of the term. Any vacancy on the committee must be filled within sixty days after the date on which the vacancy occurs.
8. The committee is responsible for and shall adopt rules for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project.
9. The committee shall develop a formal process to review complaints from providers or other persons concerning protection and advocacy activities.
10. The governor, upon compliance with federal law and regulations, may redesignate the agency responsible for carrying out the responsibilities of the project under this chapter.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 250**SENATE BILL NO. 2147**

(Appropriations Committee)

(At the request of the Department of Human Services)

STATE HOSPITAL GOVERNING BODY COMPOSITION

AN ACT to amend and reenact subsection 3 of section 25-02-01.1 of the North Dakota Century Code, relating to the governing body of the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 25-02-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The governing body must be composed of the executive director of the department of human services; the director of the division of mental health services of the department, who shall serve as chairman of the governing body; the state hospital superintendent; the state hospital medical director; ~~the performance improvement coordinator;~~ a representative of the fiscal management of the state hospital; a mental health services consumer selected by the mental health association; and a legislator selected by the legislative council. The governing body may include other persons as appointed by the governing body.

Approved March 11, 1999

Filed March 11, 1999

INSURANCE

CHAPTER 251

SENATE BILL NO. 2180

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE PENALTIES, DECLINATION, AND ORDERS

AN ACT to create and enact sections 26.1-01-03.3 and 26.1-30.1-01.1 of the North Dakota Century Code, relating to penalty for violation of the insurance code and unlawful grounds for declination of commercial insurance; to amend and reenact sections 26.1-01-03.1, 26.1-03-17, subsection 7 of section 26.1-04-03, sections 26.1-23-06, 26.1-33-02.1, subsection 6 of section 26.1-33-30, subsection 1 of section 26.1-36-03, subsection 11 of section 26.1-36-05, subsection 6 of section 26.1-36-14, subsection 1 of section 26.1-36-23.1, and section 26.1-45-05.1 of the North Dakota Century Code, relating to cease and desist orders, premium taxes, unfair discrimination, unsatisfied judgment fund, free-look periods of life insurance policies, life insurance, accident and health insurance, and long-term care insurance; and to provide a penalty.

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. 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 an application for hearing is received unless a delay is requested by all persons named in the order. The commissioner, within thirty days after the hearing, shall 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. Section 26.1-01-03.3 of the North Dakota Century Code is created and enacted as follows:

26.1-01-03.3. Penalty for violation of title. Unless otherwise provided by law, a person who violates this title is subject, after hearing by the commissioner, to payment of an administrative monetary penalty of up to ten thousand dollars.

SECTION 3. AMENDMENT. Section 26.1-03-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-03-17. Commissioner to collect premium tax - Insurance companies generally - Computation - Credits - Penalty - Estimated tax.

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 and benevolent societies~~, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third-party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and three-fourths percent with respect to accident and health insurance, and one and three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable. Collections from this tax must be deposited in the insurance tax distribution fund under section 18-04-04.1 but not in an amount exceeding one-half of the biennial amount appropriated for distribution under section 18-04-05 in any fiscal year. Collections from this tax exceeding the amount deposited in the insurance tax distribution fund each fiscal year 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.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and ~~26.1-18-27~~ 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.
3. Any ~~person~~ company 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~~ twenty-five dollars per day, excepting the

first day after the tax became due; ~~or twenty-five dollars per day, whichever is greater.~~ Any ~~person~~ company 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.

4. Every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except ~~a fraternal benefit society~~ or benevolent societies, doing business in this state required to pay premium taxes in this state shall make and file a statement of estimated premium taxes. The statement and payment must be made on a quarterly basis as prescribed by the commissioner. Failure of a company to make payments of at least one-fourth of ~~either~~ the total tax paid during the previous calendar year, or eighty percent of the actual tax for the quarter being reported of the current calendar year, shall subject the company to the penalty and interest provided in subsection 3.
5. If an amount of tax, penalty, or interest has been paid which was not due under the provisions of this section, 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 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.
6. In lieu of the tax required by subsection 1, the commissioner shall collect from each entity subject to this section an annual filing fee in the amount of two hundred dollars, provided the total tax liability of the entity pursuant to subsection 1 is less than two hundred dollars. No annual filing fee is due or may be collected from an entity if its total tax liability pursuant to subsection 1 is in excess of two hundred dollars. The annual filing fee may be reduced by any credits available pursuant to subsections 2 and 5. Failure of a company to pay the two hundred dollar filing fee subjects the company to the penalty as provided in subsection 3.

¹⁸⁰ **SECTION 4. AMENDMENT.** Subsection 7 of section 26.1-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.
 - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the

¹⁸⁰ Section 26.1-04-03 was also amended by section 1 of Senate Bill No. 2400, chapter 257, and section 2 of Senate Bill No. 2400, chapter 257.

dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

- b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.
- c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
- d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

SECTION 5. AMENDMENT. Section 26.1-23-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-23-06. Attorney general may appear. Section 26.1-23-04 does not apply in the case of any judgment entered by default, unless the commissioner and the attorney general have been given at least thirty days' notice prior to ~~the entry of judgment~~ hearing, to which notice shall be attached a copy of the summons and complaint. Upon receipt of the notice, the attorney general may enter an appearance, file a defense, appear by counsel at the trial, or take any other action the attorney general deems appropriate on behalf of the fund and in the name of the defendant, and may thereupon, on behalf of the fund and in the name of the defendant, conduct a defense, and all acts done in accordance therewith shall be deemed to be acts of the defendant. The attorney general may appear and be heard on any application for payment from the fund and may show cause, if any, why the order applied for should not be made.

SECTION 6. Section 26.1-30.1-01.1 of the North Dakota Century Code is created and enacted as follows:

26.1-30.1-01.1. Unlawful grounds for declination. The declination or termination of a commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an insurer, agent, or broker is prohibited if the declination or termination is based solely upon any of the following reasons:

1. The race, religion, nationality, ethnic group, disability, age, sex, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer, agent, or broker that limits its market to one lawful occupation or profession or to several related occupations or professions.
3. The age or location of the property of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.
4. The principal location of the insured motor vehicle, unless the decision is for a business purpose which is not a mere pretext for unfair discrimination.
5. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
6. 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.

SECTION 7. AMENDMENT. Section 26.1-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-02.1. Life insurance policies and certificates - Right to return policy.

A person who purchases a life insurance policy or certificate issued or delivered in this state may return the policy or certificate within twenty days of delivery to the purchaser. If a policy or certificate is returned, the purchaser is entitled to a refund of the premium. Every life insurance policy or certificate issued or delivered in this state to any person must have a notice prominently printed on or attached to the first page of the policy or certificate stating in substance that the purchaser may return the policy or certificate within twenty days of its delivery and have the premium refunded if, after examination of the policy, the applicant is not satisfied for any reason.

SECTION 8. AMENDMENT. Subsection 6 of section 26.1-33-30 of the North Dakota Century Code is amended and reenacted as follows:

- ~~6. Filings subject to this section must be accompanied by a certificate signed by an officer of the life insurance company or fraternal benefit society stating that it meets~~ provide the minimum reading ease score ~~on the test used or stating a statement~~ that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any ~~certification~~ statement, the commissioner may require the submission of further information to verify the certification in question.

SECTION 9. AMENDMENT. Subsection 1 of section 26.1-36-03 of the North Dakota Century Code is amended and reenacted as follows:

1. No accident and health insurance policy may be delivered or issued for delivery to any person in this state unless:
 - a. The entire money and other considerations for the policy are expressed in the policy.
 - b. The time at which the insurance takes effect and terminates is expressed in the policy.
 - c. The policy purports to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who is deemed the policyholder, any two or more eligible members of that family, including spouse, dependent children or any children under a specified age which may not exceed ~~nineteen~~ twenty-two years, and any other person dependent upon the policyholder.
 - d. The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which is uniform and not less than ten point with a lowercase unspaced alphabet length not less than one hundred twenty point. The "text" must include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.
 - e. The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 26.1-36-04, are printed at the insurer's option, either included with the benefit provisions to which they apply, or under an appropriate caption such as "EXCEPTIONS" or "EXCEPTIONS AND REDUCTIONS". If an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction must be included with the benefit provision to which it applies.
 - f. Each form, including riders and endorsements, must be identified by a form number in the lower left-hand corner of the first page thereof.
 - g. It contains no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

SECTION 10. AMENDMENT. Subsection 11 of section 26.1-36-05 of the North Dakota Century Code is amended and reenacted as follows:

11. A provision that all benefits payable under the policy or contract other than benefits for loss of time or unless subject to section 26.1-36-37.1

will be payable not more than sixty days after receipt of proof, and that, ~~subject to~~ due proof of loss, ~~all~~. All accrued benefits payable under the policy or contract for loss of time will be paid at least monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of that period will be paid as soon as possible after receipt of proof of loss.

SECTION 11. AMENDMENT. Subsection 6 of section 26.1-36-14 of the North Dakota Century Code is amended and reenacted as follows:

6. Filings subject to this section must be accompanied by a certificate signed by an officer of the insurance company, nonprofit health service corporation, fraternal benefit society, or health maintenance organization stating that it meets provide the minimum reading ease score ~~on the test used or stating a statement~~ that the score is lower than the minimum required but should be approved in accordance with subsection 2. To confirm the accuracy of any ~~certification~~ statement, the commissioner may require the submission of further information to verify the certification in question.

SECTION 12. AMENDMENT. Subsection 1 of section 26.1-36-23.1 of the North Dakota Century Code is amended and reenacted as follows:

1. No group accident and health insurance policy, including a policy issued under a self-insured plan, group health service contract issued under chapter 26.1-17, or evidence of coverage issued under chapter ~~26.1-18~~ 26.1-18.1, providing coverage for hospital or medical expenses, delivered, issued for delivery, renewed, or amended after July 1, 1987, which in addition to covering the insured also provides coverage to the spouse of the insured, may contain a provision for termination of coverage for a spouse covered under the policy, contract, or evidence of coverage solely as a result of a break in the marital relationship except by reason of an entry of a decree of annulment of marriage or divorce.

SECTION 13. 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~~ Incontestability and rescission of long-term care insurance policy or certificate. ~~After six months from the effective date of the policy or certificate, an insurer may not contest or 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 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 on the application form.~~

Approved April 20, 1999
Filed April 20, 1999

CHAPTER 252

SENATE BILL NO. 2181

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE FEES AND PENALTIES

AN ACT to amend and reenact sections 26.1-01-07, 26.1-11-06, 26.1-11-07, 26.1-26-01, 26.1-26-02, 26.1-26-03, 26.1-26-04, 26.1-26-05, 26.1-26-06, 26.1-26-08, 26.1-26-09, 26.1-26-10, 26.1-26-13, 26.1-26-14, 26.1-26-20, 26.1-26-21, 26.1-26-22, 26.1-26-23, 26.1-26-24, 26.1-26-25, 26.1-26-31, 26.1-26-32, 26.1-26-34, 26.1-26-37, 26.1-26-38, 26.1-26-40, 26.1-26-41, 26.1-26-42, 26.1-26-46, and 26.1-39-09.2 of the North Dakota Century Code, relating to fees charged by commissioner, reciprocal penalties of foreign insurance companies, countersignature requirements, and insurance agents; and to repeal sections 26.1-26-47 and 26.1-39-09.1 of the North Dakota Century Code, relating to insurance agents and property and casualty insurance programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07. Fees chargeable by commissioner. The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
2. For each original certificate of authority issued upon admittance, one hundred dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, fifty dollars.
3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.
5. For filing bylaws or amendments thereof, ten dollars.
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.
8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.
9. For filing an annual statement, twenty-five dollars.

10. For filing the abstract of the annual statement of an insurance company for publication, thirty dollars.
11. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.
12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of the certificate, ten dollars.
13. For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.
14. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which must be paid to the testing service.
15. For issuing and each annual renewal of a resident an insurance broker's, surplus lines insurance broker's, or insurance consultant's, health service corporation sales representative's, and prepaid legal services organization sales representative's license, or duplicate thereof, ten dollars.
16. ~~For issuing and each annual renewal of a nonresident insurance broker's, health service corporation sales representative's, prepaid legal services organization sales representative's, and insurance consultant's license, or duplicate thereof, fifteen dollars.~~
47. For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate an insurance agent's license, ~~ten~~ one hundred dollars.
48. ~~For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars.~~
49. 17. ~~For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, ten dollars. For issuing a duplicate of any license or registration issued under this title, ten dollars.~~
20. 18. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.

- ~~24.~~ 19. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.
- ~~22.~~ 20. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
- ~~23.~~ 21. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
- ~~24.~~ 22. For each insurance company appointment and renewal of an appointment of an insurance agent ~~or limited insurance representative~~, ten dollars.
- ~~25.~~ 23. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.
- ~~26.~~ 24. For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.
- ~~27.~~ 25. For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.
- ~~28.~~ 26. For issuing and each annual renewal of a license to an advisory organization, ~~or duplicate thereof~~, fifty dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, ~~13, 19, 22, 23, and 24~~ 16, 19, 20, and 21.

However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 2. AMENDMENT. Section 26.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-11-06. Reciprocal penalties - Retaliatory charges. Whenever the laws of any other state, or of any foreign country, or of any province or territory thereof, or when the rules of the insurance department of that state, country, province, or territory, require any insurance company, corporation, limited liability company, association, or society organized under the laws of this state, ~~or of any agent thereof~~, to deposit securities in that state, country, province, or territory for the protection of policyholders or others, or any payment for taxes, fines, penalties, certificates of authority, licenses, or fees, or the performance of any duties or acts other than and exceeding those required by the laws of this state of a like insurance company, corporation, limited liability company, association, or society, ~~or the agents thereof~~, organized under the laws of that state, country, territory, or province, while transacting business in this state, then and in every such case, an insurance

company, corporation, limited liability company, association, or society organized in that state, country, province, or territory which establishes an agency or transacts business in this state, is required to make deposits and to pay to the commissioner charges, licenses, fees, taxes, fines, or penalties in the amounts respectively, and to do all other acts which that other state, country, province, or territory, by the laws or the rules of the insurance department thereof, requires of a like insurance company, corporation, limited liability company, or society; ~~or the agents thereof~~, organized under the laws of this state when doing business in that other state, country, province, or territory. This section applies regardless of the plan of assessment or collection of premiums, contributions, or assessments adopted by the foreign company, corporation, limited liability company, association, or society.

SECTION 3. AMENDMENT. Section 26.1-11-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, ~~except as provided in section 26.1-39-09.1,~~ there may not be any requirement that an agent resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an agent resident in that state on an insurance policy written by a nonresident agent or nonresident broker of that state, then any insurance policy written by an agent resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an agent resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an agent resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the agent in that state at the request of a nonresident agent or nonresident broker of that state, then the agent resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident agent in this state covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

¹⁸¹ **SECTION 4. AMENDMENT.** Section 26.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance agents, insurance brokers, insurance consultants, ~~limited insurance representatives,~~ and surplus lines insurance brokers. This chapter applies to all lines of insurance and types of insurers including life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal, benevolent, fraternal, or health service plan, as set forth in this title.

SECTION 5. AMENDMENT. Section 26.1-26-02 of the North Dakota Century Code is amended and reenacted as follows:

¹⁸¹ Section 26.1-26-01 was also amended by section 8 of House Bill No. 1175, chapter 254.

26.1-26-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Insurance" includes annuities.
2. "Insurance agent" means an individual, partnership, limited liability partnership, corporation, or limited liability company appointed by an insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.
3. "Insurance broker" means any individual, partnership, limited liability partnership, corporation, or limited liability company which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.
4. "Insurance consultant" means an individual, partnership, limited liability partnership, corporation, or limited liability company that, for a fee, holds oneself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any insurance policy that could be issued in this state.
5. ~~"Limited insurance representative" means an individual, partnership, corporation, or limited liability company authorized by the commissioner to solicit or negotiate contracts for a particular line of insurance which the commissioner may by rule deem essential for the transaction of business in this state and which does not require the professional competency demanded for a license as an insurance agent or insurance broker.~~
6. ~~"Surplus lines insurance broker" means an individual, partnership, limited liability partnership, corporation, or limited liability company which solicits, negotiates, or procures an insurance policy from an insurer not licensed to transact business in this state which cannot be procured from an insurer licensed to do business in this state.~~

SECTION 6. AMENDMENT. Section 26.1-26-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-03. Acting as agent, broker, or consultant, ~~or limited representative without license prohibited~~ - Penalty. No person may act as or hold oneself out to be an insurance agent, insurance broker, insurance consultant, ~~limited insurance representative~~, or surplus lines insurance broker unless licensed under this chapter. No insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker may apply for, procure, negotiate for, or place for others, any policy for any line of insurance as to which that person is not then qualified and licensed under this chapter. ~~No insurance agent or limited insurance representative may place an insurance policy with any insurer as to which that person does not then hold a license as an insurance agent or limited insurance representative under this chapter.~~ Any person willfully violating this section is guilty of a class C felony.

SECTION 7. AMENDMENT. Section 26.1-26-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04. Payment to or acceptance by unlicensed person of commission prohibited - When payment or assignment of commissions permitted. No insurer, insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. In the case of an insurance agent, the agent must also be properly appointed under this chapter before the insurer may pay, or the agent may accept, any commission or other valuable consideration for services as an insurance agent. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid, to a partnership or limited liability partnership of which that person is a member, employee, or agent, to a corporation of which that person is an officer, employee, or agent, or to a limited liability company of which that person is a manager, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

SECTION 8. AMENDMENT. Section 26.1-26-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker who solicits an insurance policy on behalf of an insurer is an insurance agent within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which an insurance agent of the insurer is subject; ~~and the.~~ An insurer by compensating that accepting business from an unlicensed person through any of its officers, agents, or employees for soliciting insurance policies thereby accepts and acknowledges that person as its agent in the transaction. A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the negotiations of such insurance, is an insurance broker within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are subject.

SECTION 9. AMENDMENT. Section 26.1-26-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-06. ~~Agent or limited representative~~ Insurance agent - Agent of insurer. Every insurance agent ~~or limited insurance representative~~ who solicits or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. This section does not affect the apparent authority of an agent.

SECTION 10. AMENDMENT. Section 26.1-26-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-08. Licensing of partnership, limited liability partnership, corporation, or limited liability company - Notice of change of individuals. A partnership, limited liability partnership, corporation, or limited liability company engaging in the

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 or limited liability partnership, every officer, director, stockholder, and employee of the corporation, and every manager, governor, member, and employee of the limited liability company ~~personally engaged in this state in soliciting or negotiating policies of insurance~~ must be registered with the commissioner; and each member, officer, director, stockholder, manager, governor, or employee must also be licensed. ~~Within a reasonable time after the transfer of ownership of a partnership, corporation, or limited liability company or after receipt of a properly completed application from a partnership, corporation, or limited liability company 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, corporation, or limited liability company are competent, trustworthy, financially responsible, and of good personal and business reputation.~~ The required license fee must be paid for the partnership, limited liability partnership, corporation, or limited liability company ~~and for each individual registered.~~ The partnership, limited liability partnership, ~~corporate corporation~~, or limited liability company licensee shall within ten business days notify the commissioner of every change relative to the individuals registered under the partnership, corporation, or limited liability company. This section does not apply to a management association, partnership, limited liability partnership, corporation, or limited liability company 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 11. AMENDMENT. Section 26.1-26-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-09. Exceptions to licensing requirements. No license as an insurance agent, insurance broker, ~~limited insurance representative,~~ or surplus lines insurance broker is required of:

1. Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, ~~limited insurance representative,~~ or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.
2. Any person who secures and furnishes information for the purpose of group or wholesale life insurance, annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates under such plans or otherwise assisting in administering such plans, where no commission is paid for the service.
3. Employers or their officers or employees or the trustees of any employee trust plan, to the extent that the employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided, that the employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance.

4. Employees of a creditor who enrolls debtors under a group policy; provided, that the employees receive no commission or other compensation directly related to the enrollment.

SECTION 12. AMENDMENT. Section 26.1-26-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-10. Consultant - Exceptions to licensing requirement. ~~No~~ An individual, partnership, limited liability partnership, corporation, or limited liability company may not act as an insurance consultant until licensed as such by the commissioner. However, a license as an insurance consultant is not required of:

1. An attorney licensed to practice law in this state acting in the attorney's professional capacity.
2. A licensed insurance agent, insurance broker, or surplus lines insurance broker.
3. A trust officer of a bank acting in the normal course of the trust officer's employment.
4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or the certified public accountant's professional capacity.

SECTION 13. AMENDMENT. Section 26.1-26-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-13. ~~Agent or limited representative~~ Insurance agent - Application - Age - Appointment by insurer. Every applicant for a license as an insurance agent ~~or limited insurance representative~~, except a partnership, limited liability partnership, corporation, or limited liability company, must be eighteen years or more of age. The application for a license as an insurance agent or limited insurance representative must be accompanied by a written appointment. The appointment must be made by an officer of the insurer designating the applicant as an insurance agent or limited insurance representative for the lines of insurance the applicant will be authorized to write for the insurer. An insurance agent or limited insurance representative may represent as many insurers as may appoint the agent or representative. All appointments for any licensee must be submitted on behalf of the appointing insurer, on a form prescribed by the commissioner, and unless terminated remain in force until 12:01 a.m. on the annual renewal date. An insurer accepting business from unappointed agents with a frequency indicating a general business practice will be deemed to have violated this section. An insurance agent who holds a valid license may solicit applications for insurance on behalf of an admitted insurer with which the insurance agent does not have a valid appointment on file with the commissioner if the insurance agent has permission from the insurer to solicit insurance on the insurer's behalf and if the insurer upon receipt of the application for insurance submits a written notice of appointment to the commissioner accompanied by the insurer's check payable in the amount of the appointment fee prescribed in subsection 24 of section 26.1-01-07. The notice of appointment must be on a form prescribed by the commissioner.

SECTION 14. AMENDMENT. Section 26.1-26-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-14. ~~Consultant~~ - Investigation by commissioner. Within a reasonable time after receipt of a properly completed application for a license as an insurance ~~consultant~~ under this chapter, the commissioner may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter which the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

SECTION 15. AMENDMENT. Section 26.1-26-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-20. Nonresident license - Must hold like license elsewhere. An applicant may qualify for a nonresident license if the applicant holds a like resident license from a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee; ~~except as provided in section 26.1-26-47.~~

SECTION 16. AMENDMENT. Section 26.1-26-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-21. ~~Nonresident~~ Agents to designate commissioner as attorney for service of process - Fee. The commissioner may not issue a license to any ~~nonresident~~ applicant until the applicant files with the commissioner a designation of the commissioner and the commissioner's successors in office, as the applicant's true and lawful attorney, upon whom may be served all lawful process in any action or proceeding instituted by or on behalf of any interested person arising out of the applicant's insurance business in this state. The designation constitutes an agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the person.

SECTION 17. AMENDMENT. Section 26.1-26-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-22. Nonresident proceeding by commissioner - Service of process - Procedure. The commissioner shall serve process upon any nonresident licensee in any action or proceeding instituted by the commissioner under this chapter by mailing the process by registered mail return receipt requested to the licensee at the licensee's last known address of record or principal place of business. Service of process under this section is complete upon mailing.

SECTION 18. AMENDMENT. Section 26.1-26-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-23. Examination of individuals. Except as provided in section 26.1-26-25, the commissioner shall subject each applicant for a license as an insurance agent, insurance broker, insurance consultant, ~~limited insurance representative~~, or surplus lines insurance broker, health service corporation sales representative, or prepaid legal services organization sales representative to a written examination as to competence to act as a licensee.

SECTION 19. AMENDMENT. Section 26.1-26-24 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-24. Examination when partnership, limited liability partnership, corporation, or limited liability company is applicant. If an applicant is a partnership, limited liability partnership, corporation, or limited liability company, ~~each~~ at least

one individual who is to be registered with the ~~corporate~~ corporation, partnership, limited liability partnership, or limited liability company license must be designated as the company's principal agent. The individual designated as the principal agent of the partnership, limited liability partnership, corporation, or limited liability company, shall take the examination required by 26.1-26-23. The partnership, limited liability partnership, corporation, or limited liability company, may only be initially licensed and continue to maintain a license for those lines of insurance in which one or more of its principal agents is licensed. The partnership, limited liability partnership, corporation or limited liability company, shall inform the commissioner within ten working days of any change in status of its principal agent or agents.

¹⁸² **SECTION 20. AMENDMENT.** Section 26.1-26-25 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next preceding the date of application, unless the previous license was suspended or revoked by the commissioner.
2. A nonresident applicant may be licensed without examination if the ~~commissioner of the~~ public official having supervision of insurance in the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time the written examination was required, of a license like the license being applied for in this state.
3. An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.
4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and eighteen pertaining to state laws and rules.
5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines two through seventeen pertaining to state laws and rules.

¹⁸² Section 26.1-26-25 was also amended by section 11 of House Bill No. 1175, chapter 254.

6. An applicant for a license to act as a limited insurance representative may be licensed without examination in one or more of the following lines:
 - a. ~~Any ticket-selling agent of a common carrier who acts thereunder only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by the common carrier, or an applicant selling limited travel accident insurance in transportation terminals.~~
 - b. ~~Any other lines that to market a specific product type if the commissioner finds by rule ~~to~~ the specific product type does not require the professional competency demanded for a license as an agent or broker other product types.~~

SECTION 21. AMENDMENT. Section 26.1-26-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31. Term of license. A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a corporation, partnership, limited liability partnership, or limited liability company, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. The insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;
6. The insurance broker or surplus lines insurance broker has failed to maintain a bond as required by section 26.1-26-18, has failed to maintain a resident or nonresident license as an insurance agent as required by section 26.1-26-16, or has failed to pay the annual renewal fee to the commissioner; or
7. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

SECTION 22. AMENDMENT. Section 26.1-26-32 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance agent ~~or limited insurance representative~~ and the license of an insurance broker, surplus lines insurance broker, or insurance consultant terminates upon failure to pay the prescribed annual renewal fees before May first.

SECTION 23. AMENDMENT. Section 26.1-26-34 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-34. Termination reports by insurer - Duty of insurer - Information furnished privileged in civil action. If an appointment is terminated for any of the grounds listed in this chapter, or for cause as defined by the insurer involved, the insurer shall promptly give written notice of the termination and the effective date of the termination to the commissioner and to the licensee where reasonably possible. The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to notify the licensee.

All notices of termination must be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of termination.

~~If the termination is for any of the grounds listed in this chapter, the insurer shall so notify the commissioner.~~ Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.

SECTION 24. AMENDMENT. Section 26.1-26-37 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-37. Lost, stolen, or destroyed license - Issuance of duplicate. ~~The~~ Upon payment of the fee for a duplicate license under section 26.1-01-07, the commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon an affidavit of the licensee, as prescribed by the commissioner, concerning the facts of the loss, theft, or destruction.

SECTION 25. AMENDMENT. Section 26.1-26-38 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-38. Controlled business prohibited - Definition - Formula for determination. The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. Controlled business means insurance written on the interests of the licensee, or those of the licensee's immediate family or of the licensee's employer; or insurance covering the licensee or members of the licensee's immediate family or a corporation, limited liability company, limited liability partnership, association, or partnership, or the officers, directors, substantial stockholders, partners, or employees of such a corporation, limited liability company, limited liability partnership, association, or partnership of which the licensee or a member of the licensee's immediate family is an officer, director, substantial stockholder, partner, associate, or employee. A license is deemed to have been, or intended to be, used for the purpose of writing controlled business if the commissioner finds that during any twelve-month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent of the aggregate commissions earned on all business written by the licensee during the same period. This section does not apply to insurance written in connection with credit transactions.

SECTION 26. AMENDMENT. Section 26.1-26-40 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-40. Refusal of initial license - Notice - Hearing. If the commissioner refuses to issue a license to an applicant ~~not previously licensed in this state~~, the notice to the applicant as provided in section 26.1-26-39 must state that the applicant may request a hearing within thirty days from the date of issuance of the notice.

The commissioner shall hold a hearing, if requested by the applicant, within thirty days of the receipt of the request for a hearing and upon ten days' written notice to the applicant.

SECTION 27. AMENDMENT. Section 26.1-26-41 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or ~~in a~~ limited liability company with nor receive any remuneration whatsoever from any licensed insurance agent, insurance broker, ~~limited insurance representative~~, surplus lines insurance broker, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance agent, insurance broker, ~~limited insurance representative~~, or surplus lines insurance broker in any line.

SECTION 28. AMENDMENT. Section 26.1-26-42 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, or refuse to continue or refuse to issue 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:

1. A materially untrue statement in the license application.
2. An acquisition or attempt to acquire a license through misrepresentation or fraud.
3. The applicant has been found to have been cheating on an examination for an insurance license.
4. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
5. A conviction of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to serve the public as an insurance agent, insurance broker, insurance consultant, ~~limited insurance representative~~, or surplus lines insurance broker, or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.
8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary, or excessive insurance coverage to any person.
9. The licensee has forged another's name to an application for insurance.

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.
11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.
13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.
14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.
15. Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.

SECTION 29. AMENDMENT. Section 26.1-26-46 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-46. License suspension; or revocation; ~~or refusal~~ - Duty of licensee. Upon suspension; or revocation; ~~or refusal~~ of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

SECTION 30. AMENDMENT. Section 26.1-39-09.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-09.2. Suspension or revocation of certificate or license for noncompliance or for acceptance of a reduced service fee. The commissioner shall suspend or revoke the certificate of authority of any insurer who intentionally fails to comply with section 26.1-11-07 ~~or 26.1-39-09.1~~. The commissioner may suspend ~~or~~ revoke the license of any resident agent ~~or broker who agrees to accept or who accepts a service fee in an amount less than the service fee provided for in section 26.1-39-09.4~~ and may suspend or revoke the license of any nonresident agent who seeks to induce ~~or who induces any resident agent into accepting a service fee in an amount less than the service fee provided for in section 26.1-39-09.4~~.

SECTION 31. REPEAL. Sections 26.1-26-47 and 26.1-39-09.1 of the North Dakota Century Code are repealed.

Approved April 13, 1999
Filed April 14, 1999

CHAPTER 253

HOUSE BILL NO. 1178

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

HEALTH CARE UTILIZATION REVIEW

AN ACT to create and enact sections 26.1-01-07.6 and 26.1-26.4-04.2 of the North Dakota Century Code, relating to medicare provider-sponsored organizations and health care service utilization review; and to amend and reenact section 26.1-26.4-02, subdivision d of subsection 1 of section 26.1-36-04, subsection 22 of section 26.1-36.3-01, subdivision e of subsection 3 of section 26.1-36.3-06, subsection 6 of section 26.1-36.3-06, section 26.1-36.4-03, subsection 8 of section 26.1-47-01, and section 26.1-47-02 of the North Dakota Century Code, relating to health care service utilization review, accident and health insurance, small employer health insurance, and preferred provider organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-01-07.6 of the North Dakota Century Code is created and enacted as follows:

26.1-01-07.6. Medicare provider-sponsored organizations. The commissioner of insurance shall adopt rules relating to provider-sponsored organizations as defined in section 4001 of the Balanced Budget Act of 1997 [Pub. L. 105-33; 111 Stat. 312; 42 U.S.C. 1395 et seq.].

¹⁸³ **SECTION 2. AMENDMENT.** Section 26.1-26.4-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-02. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Commissioner" means the commissioner of insurance.
2. "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents.
3. "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

¹⁸³ Section 26.1-26.4-02 was also amended by section 3 of Senate Bill No. 2400, chapter 257.

26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.

4. "Provider of record" means the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment, and services rendered to an individual.
4. 5. "Utilization review" means a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.
- ~~5.~~ 6. "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 3. Section 26.1-26.4-04.2 of the North Dakota Century Code is created and enacted as follows:

26.1-26.4-04.2. Utilization review - Duty of health care insurers. A health care insurer that contracts with another entity to perform utilization review on its behalf remains responsible to ensure that all the requirements of this chapter are met to the same extent the health care insurer would be if it performed the utilization review itself.

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 26.1-36-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only apply to a preexisting disease or physical condition for which first manifested itself in the five years immediately prior to medical advice or treatment was received by the person during the two-year period before the effective date of the person's coverage. The exclusion or limitation may not apply to loss incurred or disability commencing after the end of the two-year period commencing on the effective date of the person's coverage.

SECTION 5. AMENDMENT. Subsection 22 of section 26.1-36.3-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22. "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 ~~sixty-three~~ thirty 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.
- d. The individual had coverage under a Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation provision and the coverage under that provision was exhausted.

SECTION 6. AMENDMENT. Subdivision e of subsection 3 of section 26.1-36.3-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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.

SECTION 7. AMENDMENT. Subsection 6 of section 26.1-36.3-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~This section~~ Subsection 1 does not apply to health benefit plans offered by a small employer carrier if the carrier makes the health benefit plans available in the small employer market only through one or more associations.

SECTION 8. AMENDMENT. Section 26.1-36.4-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36.4-03. Limits on preexisting condition exclusions. An insurer may impose a preexisting condition exclusion only if:

1. The exclusion relates to a condition, regardless of the cause of the condition, for which medical diagnosis, care, or treatment was recommended or received within the six-month period ending on the effective date of the person's coverage.
2. The exclusion extends for a period of not more than twelve months after the effective date of coverage. A group policy may impose an eighteen-month preexisting condition to a late enrollee, as the term late enrollee is defined in section 26.1-36.3-01.

SECTION 9. AMENDMENT. Subsection 8 of section 26.1-47-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Preferred provider ~~agreement~~ arrangement" means a contract between the health care insurer and one or more health care providers which complies with all the requirements of this chapter.

¹⁸⁴ **SECTION 10. AMENDMENT.** Section 26.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-02. Preferred provider arrangements. Notwithstanding any provision of law to the contrary, any health care insurer may enter into preferred provider arrangements.

1. Preferred provider arrangements must:
 - a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.
 - b. Include mechanisms which are designed to minimize the cost of the health benefit plan. These mechanisms may:
 - (1) Provide for the review and control of utilization of health care services.
 - (2) Establish a procedure for determining whether health care services rendered are medically necessary.

¹⁸⁴ Section 26.1-47-02 was also amended by section 9 of Senate Bill No. 2400, chapter 257.

- c. Include mechanisms which are designed to preserve the quality of health care.
 - d. Provide that in the event the health care insurer fails to pay for health care services as set forth in the contract, the covered person is not liable to the provider for any sums owed by the health care insurer.
 - e. Provide that in the event of the health care insurer insolvency, services for a covered person continue for the period for which premium payment has been made and until the covered person's discharge from inpatient facilities.
 - f. Provide that either party terminating the contract without cause provide the other party at least sixty days advance written notice of the termination.
2. Preferred provider arrangements may not unfairly deny health benefits to persons for covered medically necessary services.
3. A health care insurer must file all its preferred provider arrangements with the commissioner within ten days of implementing the arrangements. If the preferred provider arrangement does not meet the requirements of this chapter, the commissioner may declare the contract void and disapprove the preferred provider arrangement in accordance with the procedure for policies set out in chapter 26.1-30.
4. A preferred provider arrangement may not offer an inducement to a preferred provider to provide less than medically necessary services to a covered person. This subsection does not prohibit a preferred provider arrangement from including capitation payments or shared-risk arrangements authorized under subdivision a of subsection 1 which are not tied to specific medical decisions with respect to a patient.
5. A health care insurer may not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the health carrier that jeopardizes patient health or welfare.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 254

HOUSE BILL NO. 1175

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANIES AND AGENTS

AN ACT to create and enact a new section to chapter 26.1-01 and sections 26.1-05-02.1, 26.1-12-11.1, and 26.1-26-11.1 of the North Dakota Century Code, relating to electronic filings, domestic insurance companies, incorporated mutual insurance companies, and authorized lines of business; to amend and reenact sections 26.1-05-02, 26.1-12-01, 26.1-12-06, 26.1-12-11, 26.1-26-01, 26.1-26-11, 26.1-26-25, and 26.1-26-31.1 of the North Dakota Century Code, relating to domestic insurance companies, mutual insurance companies, insurance agents, authorized lines of business, and exceptions from examination requirements; to repeal section 26.1-05-03 of the North Dakota Century Code, relating to organization of a domestic mutual life insurance company; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-01 of the North Dakota Century Code is created and enacted as follows:

Electronic filings allowed.

1. Notwithstanding any other provision of this title, the commissioner may adopt rules that allow either an applicant or a licensee to file documents electronically with the commissioner or the commissioner's designee. The rules may contain procedures for the electronic filing of the following:
 - a. Any document required as part of an application for a license under this title;
 - b. Any document required to be filed by an applicant or licensee to maintain the license in good standing;
 - c. Any fee required under this title; and
 - d. Any other document required or permitted to be filed.
2. This section may not be interpreted to supersede any other provision of law that requires the electronic filing of a document or to require an applicant or licensee to make any other filing electronically.

SECTION 2. AMENDMENT. Section 26.1-05-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-02. Organization of domestic stock company - Number of persons required - Authorized lines. Any number of persons not less than seven may form a corporation on the stock plan to carry on one or more of the following lines of insurance:

1. ~~Against loss or damage by fire, lightning, cyclone, tornado, hail, or theft.~~ Life and annuity means insurance coverage on human lives including benefits of endowment, annuities, and credit life.
2. ~~Against the risks of inland navigation and transportation.~~ Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. ~~Upon the lives of persons, including every kind of insurance pertaining thereto.~~ Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. ~~Against accidental injuries including the granting, purchasing, and paying of annuities and indemnities.~~ Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.
5. ~~To transact fidelity insurance and corporate suretyship.~~ Variable life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.
6. ~~Upon automobiles covering in one policy or in separate policies fire, theft, property damage, liability, and collision insurance.~~
7. ~~Covering any other hazard not specifically prohibited by the laws of this state as a subject of insurance.~~
8. ~~Against legal expense.~~

A stock insurance company incorporated under this chapter may carry the lines of insurance mentioned in this section which have been expressed in its articles of incorporation.

SECTION 3. Section 26.1-05-02.1 of the North Dakota Century Code is created and enacted as follows:

26.1-05-02.1. Authority to define products. The commissioner may adopt rules that define and set forth the specific insurance products found under each line of insurance set forth in section 26.1-05-02.

SECTION 4. AMENDMENT. Section 26.1-12-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-01. Organization of mutual insurance company - Minimum number of members. Any number of persons, not less than twenty, a majority of whom must be bona fide residents of this state, may become, together with others who thereafter may be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as provided in this chapter by complying with this chapter. Any number of persons, not less than seven, may form a mutual life insurance company and, with others who may become associated with them or their successors, may become a body corporate for the purpose of carrying on the business of a mutual life insurance company. A mutual life insurance company organized under this chapter may carry insurance upon the lives of persons, including every kind of insurance pertaining thereto.

¹⁸⁵ **SECTION 5. AMENDMENT.** Section 26.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-06. Bylaws of mutual company - Meetings - Notice - Quorum. The bylaws of any mutual insurance company organized under this chapter ~~or chapter 26.1-05~~ must prescribe the manner of notification to members of all corporation meetings of members and must prescribe what constitutes a quorum of members. A quorum is those members present in person or represented by written proxies. A majority of those voting is sufficient to approve or reject any proposal submitted at any annual or special meeting. Every member of the company is entitled to one vote only. Every member must be notified of the time and place of the holding of the meetings of the company by a written notice or by an imprint on the back of each policy, receipt, or certificate of renewal. In addition, a notice of any annual or special meeting must be published in the official newspaper of the county in which the principal office of the company is located. The notice must be published at least twice, the first publication to be made at least sixty days before the meeting. If a special meeting of members is called, a notice of the time, place, and object of the meeting must be mailed to all members at least sixty days before the meeting.

SECTION 6. AMENDMENT. Section 26.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-11. Authority to insure or reinsure - ~~Kinds~~ Types of insurance open to mutual company. Any mutual insurance company organized under this chapter may make insurance contracts, and may reinsure or accept reinsurance on any portion thereof, to the extent specified in its articles of incorporation, for the following ~~kinds~~ lines of insurance:

1. ~~Fire, hail, lightning, tornado, and other insurance. Against loss or damage to property, and the loss of use and occupancy thereof, by fire, lightning, hail, tempest, flood, earthquake, frost or snow, explosion with fire ensuing, and explosion with no fire ensuing, except explosion by steam boilers or flywheels; against loss or damage by water caused by the breakage or leakage of sprinklers, pumps or other apparatus, water pipes, plumbing, or their fixtures, erected for extinguishing fires, and against accidental injury to the sprinklers, pumps or other apparatus, water pipes, plumbing, or fixtures; against the risks of inland transportation and navigation; upon automobiles, whether stationary or operated under their own power, against loss or damage by any of the causes or risks specified in this subsection, including also transportation, collision, liability for damage to property resulting from owning, maintaining, or using automobiles, and including burglary and theft, but not including loss or damage by reason of bodily injury to the person. Life and annuity means insurance coverage on human lives including benefits of endowment, annuities, and credit life.~~
2. ~~Liability insurance. Against loss, expense, or liability by reason of bodily injury or death by accident, disability, sickness, or disease suffered by others for which the insured may be liable or may have assumed~~

¹⁸⁵ Section 26.1-12-06 was also amended by section 1 of House Bill No. 1238, chapter 260.

liability. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.

3. Disability insurance. Against bodily injury or death by accident and disability by sickness. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Automobile insurance. Against any or all loss, expense, and liability resulting from the ownership, maintenance, or use of any automobile or other vehicle. A policy may not be issued under this subsection against the hazard of fire alone. Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.
5. Steam boiler insurance. Against loss or liability to persons or property resulting from explosions or accidents to boilers, containers, pipes, engines, flywheels, and elevators and machinery used in connection therewith, and against loss of use and occupancy caused thereby. If the company issues insurance under this subsection, it may make inspections and issue certificates of inspection. Variable life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.
6. Use and occupancy insurance. Against loss from interruption of trade or business which may be the result of any accident or casualty.
7. Miscellaneous insurance. Against loss or damage by any hazard upon any risk not provided for in this section which is not prohibited by statute or at common law from being the subject of insurance, except life insurance.
8. Legal expense insurance.

SECTION 7. Section 26.1-12-11.1 of the North Dakota Century Code is created and enacted as follows:

26.1-12-11.1. Authority to define products. The product types found under each of the above lines of insurance are those adopted pursuant to section 26.1-05-02.1.

¹⁸⁶ **SECTION 8. AMENDMENT.** Section 26.1-26-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance agents, insurance brokers, insurance consultants, limited insurance representatives, and surplus lines insurance brokers. This chapter applies to all lines of insurance and types of insurers including ~~life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal,~~

¹⁸⁶ Section 26.1-26-01 was also amended by section 4 of Senate Bill No. 2181, chapter 252.

benevolent, fraternal, or health service plan, as set forth in this title prepaid legal service organizations and health maintenance organizations.

SECTION 9. AMENDMENT. Section 26.1-26-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of agent or broker - Lines of insurance. An insurance agent, insurance broker, or surplus lines insurance broker may receive ~~qualification~~ for a license in to market products under one or more of the following lines:

1. ~~Life insurance and annuity contracts~~ means insurance coverage on human lives including benefits of endowment, annuities, and credit life.
2. ~~Sickness, accident,~~ Accident and health insurance means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. ~~Credit life insurance and credit accident and health insurance.~~
4. ~~Fire and allied lines.~~
5. ~~Vehicle liability and vehicle physical damage insurance.~~
6. ~~Comprehensive personal and general liability coverage.~~
7. ~~Marine and transportation insurance.~~
8. ~~Credit and mortgage guarantee insurance.~~
9. ~~Burglary and theft insurance.~~
10. ~~Crop insurance.~~
11. ~~Bail bonds.~~
12. ~~Fidelity and surety insurance.~~
13. ~~Homeowners' and farmowners' multiple peril insurance.~~
14. ~~Commercial multiple peril insurance.~~
15. ~~3.~~ Property and casualty insurance sold in connection with a credit transaction means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.
16. ~~Industrial fire insurance.~~
17. ~~Legal expense insurance.~~
18. ~~5.~~ Variable annuities and variable life insurance life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.

19. ~~Title insurance.~~

The product types found under each of the above lines of insurance are those adopted pursuant to section 26.1-15-02.1.

SECTION 10. Section 26.1-26-11.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-11.1. Authority to define procedures and requirements. The commissioner may adopt rules to implement licensing procedures and requirements specific to each line of insurance and each product type within each line of insurance.

¹⁸⁷ **SECTION 11. AMENDMENT.** Section 26.1-26-25 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next preceding the date of application, unless the previous license was suspended or revoked by the commissioner.
2. A nonresident applicant may be licensed without examination if the commissioner of the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time the written examination was required, of a license like the license being applied for in this state.
3. An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.
4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and ~~eighteen~~ five pertaining to state laws and rules.
5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines ~~two through seventeen~~ three and four pertaining to state laws and rules.

¹⁸⁷ Section 26.1-26-25 was also amended by section 20 of Senate Bill No. 2181, chapter 252.

6. An applicant for a license to act as a limited insurance representative may be licensed without examination ~~in one or more of the following lines:~~
 - a. ~~Any ticket-selling agent of a common carrier who acts thereunder only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by the common carrier, or an applicant selling limited travel accident insurance in transportation terminals.~~
 - b. ~~Any other lines that to market a specific product type if the commissioner finds by rule ~~to~~ the specific product type does not require the same professional competency demanded for a license as an agent or broker other product types.~~
7. An applicant for a license to write only a specific product type may be licensed subject to reduced examination requirements if the commissioner finds by rule that the requirements for licensure would otherwise be too burdensome and unrelated to that specific product type.

SECTION 12. AMENDMENT. Section 26.1-26-31.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.1. Continuing education required - Exceptions.

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~~ specific product type. 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 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.

2. The commissioner shall by rule divide the persons subject to this section into two equal segments for the purpose of reporting, as follows:
 - a. One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.
 - b. One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every even-numbered year.
3. All persons licensed after January 1, 1989, shall report within thirty days of the first day of January of the year following the second anniversary of the person's licensure.

SECTION 13. REPEAL. Section 26.1-05-03 of the North Dakota Century Code is repealed.

SECTION 14. EFFECTIVE DATE. This Act becomes effective on July 1, 2000.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 255**SENATE BILL NO. 2156**

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

**ACCOUNTING PRACTICES AND PROCEDURES
MANUAL ADOPTION**

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to adoption of the national association of insurance commissioners accounting practices and procedures manual.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

Accounting practices and procedures manual. The commissioner shall adopt by rule the accounting practices and procedures manual published by the national association of insurance commissioners. The provisions of the accounting practices and procedures manual adopted by the commissioner govern the statutory accounting practices of all insurance companies, including health maintenance organizations, licensed to do business in this state. Any reference to the accounting practices and procedures manual in this title means the manual the commissioner adopts by rule, unless specifically stated otherwise.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 256

HOUSE BILL NO. 1176

(Industry, Business and Labor Committee)
(At the request of the Commissioner of Insurance)

HEALTH ORGANIZATION RISK-BASED CAPITAL

AN ACT to create and enact chapter 26.1-03.2 of the North Dakota Century Code, relating to risk-based capital for health organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-03.2 of the North Dakota Century Code is created and enacted as follows:

26.1-03.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Adjusted risk-based capital report" means a risk-based capital report which has been adjusted by the commissioner in accordance with section 26.1-03.2-02.
2. "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.
3. "Domestic health organization" means a health organization domiciled in this state.
4. "Foreign health organization" means a health organization that is licensed to do business in this state but is not domiciled in this state.
5. "Health organization" means a health maintenance organization, prepaid limited health service organization, nonprofit health service corporation, or other managed care organization licensed by the commissioner to do business in this state. "Health organization" does not include an organization that is licensed as either a life and health insurer or a property and casualty insurer that is otherwise subject to either the life or property and casualty risk-based capital requirements.
6. "Risk-based capital instructions" means the risk-based capital report including risk-based capital instructions adopted by the national association of insurance commissioners, as these risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.
7. "Risk-based capital level" means a health organization's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital, or mandatory control level risk-based capital and:

- a. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.
 - b. "Company action level risk-based capital" means, with respect to any health organization, the product of 2.0 and its authorized control level risk-based capital.
 - c. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital.
 - d. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital.
8. "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in subsection 2 of section 26.1-03.2-03. If the commissioner rejects the risk-based capital plan, and it is revised by the health organization, with or without the commissioner's recommendation, the plan must be called the "revised risk-based capital plan".
 9. "Risk-based capital report" means the report required in section 26.1-03.2-02.
 10. "Total adjusted capital" means the sum of:
 - a. A health organization's statutory capital and surplus, net worth, as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under section 26.1-03-07 or, in the case of a health maintenance organization, section 26.1-18.1-08; and
 - b. Such other items, if any, as the risk-based capital instructions may provide.

26.1-03.2-02. Risk-based capital reports.

1. On or before each March first, a domestic health organization shall prepare and submit to the commissioner a report of its risk-based capital levels as of the end of the calendar year just ended, in a form and containing such information as is required by the risk-based capital instructions. In addition, a domestic health organization shall file its risk-based capital report:
 - a. With the national association of insurance commissioners in accordance with the risk-based capital instructions; and
 - b. With the insurance commissioner in any state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its risk-based capital report not later than the latter of:
 - (1) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or

- (2) The filing date.
2. A health organization's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take the following into account, and may adjust for the covariance between, as determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:
 - a. Asset risk;
 - b. Credit risk;
 - c. Underwriting risk; and
 - d. All other business risks and such other relevant risks as are set forth in the risk-based capital instructions.
3. Net worth over the amount produced by the risk-based capital requirements contained in this chapter and the formulas, schedules, and instructions referenced in this chapter is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the risk-based capital levels required by this chapter. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this chapter.
4. If a domestic health organization files a risk-based capital report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the risk-based capital report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk-based capital report as so adjusted is referred to as an "adjusted risk-based capital report".

26.1-03.2-03. Company action level event.

1. "Company action level event" means any of the following events:
 - a. The filing of a risk-based capital report by a health organization which indicates that the health organization's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital;
 - b. Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates an event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07; or
 - c. If, pursuant to section 26.1-03.2-07, a health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.

2. In the event of a company action level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that:
 - a. Identifies the conditions that contribute to the company action level event;
 - b. Contains proposals of corrective actions which the health organization intends to take and which would be expected to result in the elimination of the company action level event;
 - c. Provides projections of the health organization's financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;
 - d. Identifies the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and
 - e. Identifies the quality of, and problems associated with, the health organization's business, including its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.
3. The risk-based capital plan must be submitted:
 - a. Within forty-five days of the company action level event; or
 - b. If the health organization challenges an adjusted risk-based capital report pursuant to section 26.1-03.2-07, within forty-five days after notification to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.
4. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner, the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization must set forth the reasons for the determination and may set forth proposed revisions that will render the risk-based capital plan satisfactory in the judgment of the commissioner. Upon notification from the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised risk-based capital plan to the commissioner:
 - a. Within forty-five days after the notification from the commissioner; or

- b. If the health organization challenges the notification from the commissioner under section 26.1-03.2-07, within forty-five days after a notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
5. In the event of a notification by the commissioner to a health organization that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, subject to the health organization's right to a hearing under section 26.1-03.2-07, may specify in the notification that the notification constitutes a regulatory action level event.
6. Every domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in any state in which the health organization is authorized to do business if:
 - a. The state has a risk-based capital provision substantially similar to subsection 1 of section 26.1-03.2-08; and
 - b. The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the latter of:
 - (1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or
 - (2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsections 3 and 4.

26.1-03.2-04. Regulatory action level event.

1. "Regulatory action level event" means, with respect to a health organization, any of the following events:
 - a. The filing of a risk-based capital report by the health organization which indicates that the health organization's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;
 - b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07;
 - c. If, pursuant to section 26.1-03.2-07, the health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge;

- d. The failure of the health organization to file a risk-based capital report by the filing date, unless the health organization has provided an explanation for the failure which is satisfactory to the commissioner and has cured the failure within ten days after the filing date;
 - e. The failure of the health organization to submit a risk-based capital plan to the commissioner within the time period set forth in subsection 3 of section 26.1-03.2-03;
 - f. Notification by the commissioner to the health organization that:
 - (1) The risk-based capital plan or revised risk-based capital plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and
 - (2) Notification constitutes a regulatory action level event with respect to the health organization, provided the health organization has not challenged the determination under section 26.1-03.2-07;
 - g. If, pursuant to section 26.1-03.2-07, the health organization challenges a determination by the commissioner under subdivision f, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the challenge;
 - h. Notification by the commissioner to the health organization that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under section 26.1-03.2-07; or
 - i. If, pursuant to section 26.1-03.2-07, the health organization challenges a determination by the commissioner under subdivision h, the notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the challenge.
2. In the event of a regulatory action level event the commissioner shall:
 - a. Require the health organization to prepare and submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;
 - b. Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the health organization, including a review of its risk-based capital plan or revised risk-based capital plan; and
 - c. Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner determines are required.

3. In determining corrective actions, the commissioner may take into account factors the commissioner deems relevant with respect to the health organization risk based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:
 - a. Within forty-five days after the occurrence of the regulatory action level event;
 - b. If the health organization challenges an adjusted risk-based capital report pursuant to section 26.1-03.2-07 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge; or
 - c. If the health organization challenges a revised risk-based capital plan pursuant to section 26.1-03.2-07 and the challenge is not frivolous in the judgment of the commissioner, within forty-five days after the notification to the health organization that the commissioner has, after a hearing, reject the health organization's challenge.
4. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the health organization's risk-based capital plan or revised risk-based capital plan, examine or analyze the assets, liabilities, and operations, including contractual relationships, of the health organization and formulate the corrective order with respect to the health organization. The fees, costs, and expenses relating to consultants must be borne by the affected health organization or such other party as directed by the commissioner.

26.1-03.2-05. Authorized control level event.

1. "Authorized control level event" means any of the following events:
 - a. The filing of a risk-based capital report by the health organization which indicates that the health organization's total adjust capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;
 - b. The notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates the event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07;
 - c. If, pursuant to section 26.1-03.2-07, the health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge;

- d. The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order, provided the health organization has not challenged the corrective order under section 26.1-03.2-07; or
 - e. If the health organization has challenged a corrective order under section 26.1-03.2-07 and the commissioner, after a hearing, has rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.
2. In the event of an authorized control level event with respect to a health organization, the commissioner shall:
 - a. Take such actions as are required under section 26.1-03.2-04 regarding a health organization with respect to which a regulatory action level event has occurred; or
 - b. If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under chapter 26.1-06.1. If the commissioner takes such actions, the authorized control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1 and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in chapter 26.1-06.1. If the commissioner takes actions under this subdivision pursuant to an adjusted risk-based capital report, the health organization is entitled to such protections as are afforded to health organizations under the provisions of chapter 26.1-06.1 pertaining to summary proceedings.

26.1-03.2-06. Mandatory control level event.

1. "Mandatory control level event" means any of the following events:
 - a. The filing of a risk-based capital report that indicates that the health organization's total adjusted capital is less than its mandatory control level risk-based capital;
 - b. Notification by the commissioner to the health organization of an adjusted risk-based capital report that indicates the event in subdivision a, provided the health organization does not challenge the adjusted risk-based capital report under section 26.1-03.2-07; or
 - c. If, pursuant to section 26.1-03.2-07, the health organization challenges an adjusted risk-based capital report that indicates the event in subdivision a, notification by the commissioner to the health organization that the commissioner, after a hearing, has rejected the health organization's challenge.
2. In the event of a mandatory control level event, the commissioner shall take such actions as are necessary to place the health organization under regulatory control under chapter 26.1-06.1. In that event, the mandatory

control level event must be deemed sufficient grounds for the commissioner to take action under chapter 26.1-06.1, and the commissioner shall have the rights, powers, and duties with respect to the health organization as are set forth in chapter 26.1-06.1. If the commissioner takes actions pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 26.1-06.1 pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

26.1-03.2-07. Hearings. Upon the occurrence of any of the following events, the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five days after the notification by the commissioner under subsection 1, 2, 3, or 4. Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing, which may not be less than ten nor more than thirty days after the date of the health organization's request. The events include:

1. Notification to a health organization by the commissioner of an adjusted risk-based capital report;
2. Notification to a health organization by the commissioner that:
 - a. The health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and
 - b. Notification constitutes a regulatory action level event with respect to the health organization;
3. Notification to a health organization by the commissioner that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company action level event with respect to the health organization in accordance with its risk-based capital plan or revised risk-based capital plan; or
4. Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

26.1-03.2-08. Confidentiality - Prohibition on announcements - Prohibition on use in ratemaking.

1. All risk-based capital reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, and risk-based capital plans, including the results or report of any examination or analysis of a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to examination or analysis, with respect to a domestic health organization or foreign health organization, which are filed with the commissioner constitute information that might be damaging to the health organization if made available to its competitors, and therefore shall be kept confidential by the commissioner. This

information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the health organization's risk-based capital levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
3. It is the further judgment of the legislature that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and may not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

26.1-03.2-09. Supplemental provisions - Rules - Exemption.

1. The provisions of this chapter are supplemental to any other provisions of the laws of this state, and do not preclude or limit any other powers or duties of the commissioner under such laws, including chapter 26.1-06.1.
2. The commissioner may adopt reasonable rules necessary for the implementation of this chapter.
3. The commissioner may exempt from the application of this chapter a domestic health organization that:

- a. Writes direct business only in this state;
- b. Assumes no reinsurance in excess of five percent of direct premium written; and
- c. Writes direct annual premiums for comprehensive medical business of less than an amount determined by the commissioner; or
- d. Is a limited health service organization that covers less than a number of lives determined by the commissioner.

26.1-03.2-10. Foreign health organizations.

1. a. A foreign health organization, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report for the calendar year just ended, the latter of:
 - (1) The date a risk-based capital report would be required to be filed by a domestic health organization under this chapter; or
 - (2) Fifteen days after the request is received by the foreign health organization.
- b. A foreign health organization, at the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.
2. In the event of a company action level event, regulatory action level event, or authorized control level event with respect to a foreign health organization as determined under the risk-based capital statute applicable in the state of domicile of the health organization or, if no risk-based capital statute is in force in that state, under the provisions of this chapter, if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file a risk-based capital plan in the manner specified under that state's risk-based capital statute or, if no risk-based capital statute is in force in that state, under section 26.1-03.2-03, the commissioner may require the foreign health organization to file a risk-based capital plan with the commissioner. In such event, the failure of the foreign health organization to file a risk-based capital plan with the commissioner is grounds to order the health organization to cease and desist from writing new insurance business in this state.
3. In the event of a mandatory control level event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application to the district court permitted under section 26.1-06.1-04 with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory control level event shall be considered adequate grounds for the application.

26.1-03.2-11. Immunity. There is no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its

employees or agents for any action taken by them in the performance of their powers and duties under this chapter.

26.1-03.2-12. Notices. All notices by the commissioner to a health organization which may result in regulatory action under this chapter is effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission is effective upon the health organization's receipt of notice.

26.1-03.2-13. Phasein provision. For risk-based capital reports required to be filed by health organizations with respect to 1999, the following requirements apply in lieu of the provisions of sections 26.1-03.2-03, 26.1-03.2-04, 26.1-03.2-05, and 26.1-03.2-06:

1. In the event of a company action level event with respect to a domestic health organization, the commissioner shall take no regulatory action under this chapter.
2. In the event of a regulatory action level event under subdivision a, b, or c of subsection 1 of section 26.1-03.2-04, the commissioner shall take the actions required under section 26.1-03.2-03.
3. In the event of a regulatory action level event under subdivision d, e, f, g, h, or i of subsection 1 of section 26.1-03.2-04 or an authorized control level event, the commissioner shall take the actions required under section 26.1-03.2-04 with respect to the health organization.
4. In the event of a mandatory control level event with respect to a health organization, the commissioner shall take the actions required under section 26.1-03.2-05 with respect to the health organization.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 257

SENATE BILL NO. 2400

(Senators Kilzer, DeMers)
(Representatives Berg, Rose)

HEALTH INSURANCE PRACTICES

AN ACT to create and enact three new subsections to section 26.1-04-03, two new subsections to section 26.1-26.4-02, and four new sections to chapter 26.1-36 of the North Dakota Century Code, relating to fairness in health insurance practices, disclosure of health plan information, confidentiality of medical information maintained by health carriers, contract limitations, and health care grievance procedures; and to amend and reenact subsection 14 of section 26.1-04-03, subsection 9 of section 26.1-26.4-04, and section 26.1-47-02 of the North Dakota Century Code, relating to prohibited health insurance practices, health care utilization review procedures, and preferred provider arrangements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁸ **SECTION 1. AMENDMENT.** Subsection 14 of section 26.1-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. As used in subsections 15 ~~and~~, 16, and section 2 of this Act, unless the context otherwise requires:
 - a. "Entity" includes a third-party administrator ~~or other person with responsibility for contracts with health care providers under a health plan~~, an insurance company as defined in section 26.1-02-01, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation.
 - b. "Health care provider" means a person that delivers, administers, or supervises health care products or services, for profit or otherwise, in the ordinary course of business or professional practice.
 - c. "Health plan" means any public or private plan or arrangement that provides or pays the cost of health benefits, including any organization of health care providers that furnishes health services under a contract or agreement with this type of plan.
 - d. "Medical communication" means any communication, other than a knowing and willful misrepresentation, made by a health care provider to a patient regarding the health care needs or treatment options of the patient and the applicability of the health plan to the

¹⁸⁸ Section 26.1-04-03 was also amended by section 4 of Senate Bill No. 2180, chapter 251, and section 2 of Senate Bill No. 2400, chapter 257.

patient's needs or treatment. The term includes communications concerning:

- (1) Tests, consultations, and treatment options;
 - (2) Risks or benefits associated with tests, consultations, and options;
 - (3) Variation in experience, quality, or outcome among any health care providers or health care facilities providing any medical service;
 - (4) The process, basis, or standard used by an entity to determine whether to authorize or deny health care services or benefits; and
 - (5) Financial incentives or disincentives based on service utilization provided by an entity to a health care provider.
- e. "Patient" includes a former, current, or prospective patient or the guardian or legal representative of any former, current, or prospective patient.

¹⁸⁹ **SECTION 2.** Three new subsections to section 26.1-04-03 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

Incentives to withhold medically necessary care. An entity may not offer a health care provider, and a contract with a health care provider under a health plan may not contain, an incentive plan that includes a specific payment made to, or withheld from, the provider as an inducement to deny, reduce, limit, or delay medically necessary care covered by the health plan and provided with respect to a patient. This subsection does not prohibit incentive plans, including capitation payments or shared-risk arrangements, that are not tied to specific medical decisions with respect to a patient. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void. As used in this subsection, "medically necessary care" means health care services, supplies, or treatments that a reasonably prudent physician or other health care provider would provide to a patient for the prevention, diagnosis, or treatment of illness, injury, disease, or its symptoms which are in accordance with generally accepted standards of medical practice, clinically appropriate in terms of type, frequency, extent, site, and duration, and not primarily for the convenience of the patient, physician, or other health care provider. This definition does not preclude an entity from establishing a definition of "medically necessary care" for determining which services are covered by the health plan.

Retaliation for patient advocacy. An entity may not take any of the following actions against a health care provider solely because the

¹⁸⁹ Section 26.1-04-03 was also amended by section 4 of Senate Bill No. 2180, chapter 251, and section 1 of Senate Bill No. 2400, chapter 257.

provider, in good faith, reports to state or federal authorities an act or practice by the entity that jeopardizes patient health or welfare, or advocates on behalf of a patient in a utilization review program or grievance procedure:

- a. Refusal to contract with the health care provider;
- b. Termination of or refusal to renew a contract with the health care provider;
- c. Refusal to refer patients to or allow others to refer patients to the health care provider; or
- d. Refusal to compensate the health care provider for covered services that are medically necessary.

Unfair reimbursement. An entity may not require that a health care provider receive under a health plan, pursuant to policies of the entity or a contract with the health care provider, the lowest payment for services and items that the health care provider charges or receives from any other entity. In addition to the proceedings and penalties provided in this chapter, a contract provision violating this subsection is void.

¹⁹⁰ **SECTION 3.** Two new subsections to section 26.1-26.4-02 of the North Dakota Century Code are created and enacted as follows:

"Emergency medical condition" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman the health of the woman or her unborn child, in serious jeopardy.

"Emergency services" means health care services, supplies, or treatments furnished or required to screen, evaluate, and treat an emergency medical condition.

¹⁹¹ **SECTION 4. AMENDMENT.** Subsection 9 of section 26.1-26.4-04 of the North Dakota Century Code is amended and reenacted as follows:

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. When~~

¹⁹⁰ Section 26.1-26.4-02 was also amended by section 2 of House Bill No. 1178, chapter 253.

¹⁹¹ Section 26.1-26.4-04 was also amended by section 2 of House Bill No. 1136, chapter 264.

conducting utilization review or making a benefit determination for emergency services:

- a. A utilization review agent may not deny coverage for emergency services and may not require prior authorization of these services.
- b. Coverage of emergency services is subject to applicable copayments, coinsurance, and deductibles.

SECTION 5. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Information disclosure. An insurance company, as defined in section 26.1-02-01, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not deliver, issue, execute, or renew a health insurance policy or health service contract unless that insurer makes available to persons covered under the policy or contract a plan description that discloses in writing the terms and conditions of the policy or contract. The plan description must use the plain and ordinary meaning of words so as to reasonably ensure comprehension by a layperson and must be made available to each person covered under the contract, in any manner reasonably assuring availability prior to the delivery, issuance, execution, or renewal of the policy or contract.

1. The information required to be disclosed by the insurer must include, in addition to any other disclosures required by law:
 - a. A general description of benefits and covered services, including benefit limits and coverage exclusions and the definition of medical necessity used by the insurer in determining whether benefits will be covered;
 - b. A general description of the insured's financial responsibility for payment of premiums, deductibles, coinsurance, and copayment amounts, including any maximum limitations on out-of-pocket expenses, any maximum limits on payments for health care services, and the maximum out-of-pocket costs for services that are provided by nonparticipating health care professionals;
 - c. A general explanation of the extent to which benefits and services may be obtained from nonparticipating providers, including any out-of-network coverage or options;
 - d. A general explanation of the extent to which a person covered under the policy or contract may select from among participating providers and any limitations imposed on the selection of participating health care providers;
 - e. A general description of the insurer's use of any prescription drug formulary or any other general limits on the availability of prescription drugs;
 - f. A general description of the procedures and any conditions for persons covered under the policy or contract to change participating primary and specialty providers;

- e. Whether a specifically identified drug is included or excluded from coverage.
3. Nothing in this section may be construed as preventing an insurer from making the information under subsections 1 and 2 available to a person covered under the policy or contract through a handbook or similar publication.

SECTION 6. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of medical information.

1. An insurance company, as defined in section 26.1-02-01, health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not deliver, issue, execute, or renew a health insurance policy or health service contract unless confidentiality of medical information is assured pursuant to this section. An insurer shall adopt and maintain procedures to ensure that all identifiable information maintained by the insurer regarding the health, diagnosis, and treatment of persons covered under a policy or contract is adequately protected and remains confidential in compliance with all federal and state laws and regulations and professional ethical standards. Unless otherwise provided by law, any data or information pertaining to the health, diagnosis, or treatment of a person covered under a policy or contract, or a prospective insured, obtained by an insurer from that person or from a health care provider, regardless of whether the information is in the form of paper, is preserved on microfilm, or is stored in computer-retrievable form, is confidential and may not be disclosed to any person except:
- a. If the data or information identifies the covered person or prospective insured upon a written, dated, and signed approval by the covered person or prospective insured, or by a person authorized to provide consent pursuant to section 23-12-13 for a minor or an incapacitated person;
 - b. If the data or information identifies the health care provider upon a written, dated, and signed approval by the provider. However, this subdivision may not be construed to prohibit an insurer from disclosing data or information pursuant to chapter 23-01.1 or from disclosing, as part of a contract or agreement in which the health care provider is a party, data or information that identifies a provider as part of mutually agreed upon terms and conditions of the contract or agreement;
 - c. If the data or information does not identify either the covered person or prospective insured or the health care provider, the data or information may be disclosed upon request for use for statistical purposes or research;
 - d. Pursuant to statute or court order for the production or discovery of evidence; or

- e. In the event of a claim or litigation between the covered person or prospective insured and the insurer in which the data or information is pertinent.
2. An insurer may claim any statutory privileges against disclosure that the health care provider who furnished the information to the insurer is entitled to claim.
3. This section may not be construed to prevent disclosure necessary for an insurer to conduct utilization review or management consistent with the standards imposed by chapter 26.1-26.4, to facilitate payment of a claim, to analyze health plan claims or health care records data, to conduct disease management programs with health care providers, or to reconcile or verify claims under a shared risk or capitation arrangement. This section does not apply to data or information disclosed by an insurer as part of a biomedical research project approved by an institutional review board established under federal law. Nor may this section be construed to limit the insurance commissioner's access to records of the insurer for purposes of enforcement or other activities related to compliance with state or federal laws; however, medical records acquired by the commissioner as part of an examination of an insurer's business practices under section 26.1-03-19.2 or any other regulatory action or proceeding commenced by the commissioner are confidential.

SECTION 7. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Contract limitations.

1. An insurance company as defined by section 26.1-02-01 issuing a health and accident policy, a health maintenance organization, or any other entity providing a plan of health insurance subject to state insurance regulation may not terminate a practitioner's participating contract, designate a practitioner as nonpayable, or otherwise impose sanctions on any practitioner solely for an excessive or inappropriate practice pattern unless the requirements of this section are met. If a practitioner engages in an excessive or inappropriate practice pattern for the practitioner's specialty, the entity shall inform the practitioner, in writing, as to the manner in which the practitioner's practice is excessive or inappropriate. The entity 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 the excessive or inappropriate practice pattern continues, the entity may impose reasonable sanctions on the practitioner, terminate the practitioner's participating contract, or designate the practitioner as nonpayable. If considered for sanction, termination, or nonpayable status, the affected practitioner must first be given the opportunity to be present and to be heard by a committee appointed by the entity which must include at least one representative of the practitioner's specialty. The entity may not impose sanctions on a practitioner, terminate a practitioner, or designate a practitioner as nonpayable in the absence of the committee's recommendation to do so. All reports, practice profiles, data, and proceedings of the entity relative to a practitioner who is sanctioned, terminated, or considered for designation as nonpayable are confidential and may not be disclosed or be subject to subpoena or other legal process. Nonpayable status under

this section may not commence until after appropriate notification to the entity's subscribers and the affected practitioner. As used in this section "practitioner" includes an optometrist, a physician, a chiropractor, or an advanced registered nurse practitioner duly licensed to practice in this state.

2. If the entity uses a practice profile as a factor to evaluate a practitioner's practice pattern, the entity shall provide upon request of the practitioner at any time, a description of the criteria, data sources, and methodologies used to compile the practice profile concerning the practitioner and the manner in which the practice profile is used to evaluate the practitioner. An entity may not sanction a practitioner, terminate a practitioner's participating contract, or designate a practitioner as nonpayable on the basis of a practice profile without informing the practitioner of the specific data underlying those findings. For purposes of this section, a "practice profile" means a profile, summary, economic analysis, or other analysis of data concerning the cost, quality, or quantity of services rendered by an individual practitioner, group of practitioners, or preferred provider. In addition, an entity in developing practice profiles or otherwise measuring practitioner performance shall:
 - a. Make severity adjustments, including allowances for the severity of illness or condition of the patient mix and allowances for patients with multiple illnesses or conditions;
 - b. Periodically evaluate, with input from specialty-specific practitioners as appropriate, the quality and accuracy of practice profiles, data sources, and methodologies;
 - c. Develop and implement safeguards to protect against the unauthorized use or disclosure of practice profiles; and
 - d. Provide the opportunity for any practitioner at any time to examine the accuracy, completeness, or validity of any practice profile concerning the practitioner and to prepare a written response to the profile. The entity shall negotiate in good faith with the practitioner to correct any inaccuracies or to make the profile complete. If the inaccuracies or deficiencies are not corrected to the satisfaction of the practitioner, the entity shall submit the written response prepared by the practitioner along with the profile at the time the profile is used pursuant to subsection 1 or provided to any third party consistent with section 6 of this Act.

SECTION 8. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Grievance procedures.

1. An accident and health insurance policy may not be delivered or issued for delivery by an insurance company, as defined in section 26.1-02-01, or any other entity providing a plan of health insurance subject to state insurance regulation to a person in this state unless the entity establishes and maintains a grievance procedure for resolving complaints by covered persons and providers and addressing questions and concerns regarding any aspect of the plan, including access to and availability of

services, quality of care, choice and accessibility of providers, and network adequacy. The procedure must include a system to record and document all grievances since the date of its last examination of the grievances.

2. The procedure must be approved by the insurance commissioner. The commissioner may examine the grievance procedures.

¹⁹² **SECTION 9. AMENDMENT.** Section 26.1-47-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-47-02. Preferred provider arrangements. Notwithstanding any provision of law to the contrary, any health care insurer may enter into preferred provider arrangements.

1. Preferred provider arrangements must:
 - a. Establish the amount and manner of payment to the preferred provider. The amount and manner of payment may include capitation payments for preferred providers.
 - b. Include mechanisms, subject to the minimum standards imposed by chapter 26.1-26.4, which are designed to minimize the cost of the health benefit plan. These mechanisms may:
 - (1) ~~Provide for the review and control of the~~ utilization of health care services-
 - (2) ~~Establish and establish~~ a procedure for determining whether health care services rendered are medically necessary.
 - c. Include mechanisms which are designed to preserve the quality of health care.
 - d. With regard to an arrangement in which the preferred provider is placed at risk for the cost or utilization of health care services, specifically include a description of the preferred provider's responsibilities with respect to the health care insurer's applicable administrative policies and programs, including utilization review, quality assessment and improvement programs, credentialing, grievance procedures, and data reporting requirements. Any administrative responsibilities or costs not specifically described or allocated in the contract establishing the arrangement as the responsibility of the preferred provider are the responsibility of the health care insurer.
2. Preferred provider arrangements may not unfairly deny health benefits to persons for covered medically necessary services.

¹⁹² Section 26.1-47-02 was also amended by section 10 of House Bill No. 1178, chapter 253.

3. Preferred provider arrangements may not restrict a health care provider from entering into preferred provider arrangements or other arrangements with other health care insurers.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 258

HOUSE BILL NO. 1209

(Representatives Dorso, Kempenich, Severson)

LOW-RISK INCENTIVE FUND INVESTMENT AND TAX CREDITS

AN ACT to create and enact a new subsection to section 26.1-05-19 of the North Dakota Century Code, relating to an insurance company's authorized investment of funds in a North Dakota low-risk incentive fund; to amend and reenact sections 26.1-50-06 and 26.1-50-07 of the North Dakota Century Code, relating to tax credits available to a North Dakota low-risk incentive fund and the admitted assets of insurers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-05-19 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Loans, securities, or investments in a North Dakota low-risk incentive fund organized under chapter 26.1-50. The aggregate admitted value of the company's investment under this subsection may not at anytime exceed the lesser of five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law. A company making an investment under this subsection may value at par any investment purchased at par.

SECTION 2. AMENDMENT. Section 26.1-50-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-50-06. Tax credit - Penalty. If the requirements of this chapter are met, an insurer is entitled to a credit against taxes due under section 26.1-03-17 or 26.1-11-06 as determined under this section. If the insurer is a member of an insurance holding company system, the insurer or any affiliate insurer is entitled to a credit against taxes under section 26.1-03-17 or 26.1-11-06 as determined under this section.

1. An insurer making or participating in a loan under this chapter or an affiliate insurer under this chapter is entitled to a premium tax credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating insurer's share of the interest earned on the loan during the calendar year; and
 - b. The participating insurer's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.

2. The maximum credit allowed an insurer for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the insurer's tax liability under subsection 1 of section 26.1-03-17 and no unused credit may be carried forward.
4. Credits under this section for all insurers may not exceed seven hundred fifty thousand dollars in a calendar year.

SECTION 3. AMENDMENT. Section 26.1-50-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-50-07. Assets of insurers. The amount of a loan made by an insurer or the amount of an insurer's participation in a loan made under this chapter may not be considered or reported on the insurer's annual statement as an admitted asset except to the extent provided under ~~subsection 33~~ of section 26.1-05-19.

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 259

SENATE BILL NO. 2263

(Senators Klein, Tallackson)
(Representatives Mahoney, Monson)

PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

AN ACT to create and enact chapter 26.1-42.1 of the North Dakota Century Code, relating to an insurance guaranty association for property and casualty insurance; to amend and reenact subsection 9 of section 26.1-06.1-03, section 26.1-14-15, subdivision b of subsection 3 of section 26.1-40-15.1, subsection 3 of section 26.1-40-15.5, subsection 1 of section 26.1-41-18, and subsection 3 of section 26.1-46-04 of the North Dakota Century Code; and to repeal chapter 26.1-42 of the North Dakota Century Code, relating to the insurance guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 26.1-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

9. "Guaranty association" means the North Dakota insurance guaranty association created by chapter ~~26.1-42~~ 26.1-42.1 or the North Dakota life and health insurance guaranty association created by chapter 26.1-38.1, and any other similar entity now or hereafter created by the legislative assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entity now in existence in or hereafter created by the legislature of any other state.

SECTION 2. AMENDMENT. Section 26.1-14-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-14-15. Optional membership in insurance guaranty association. The company may not be a member insurer under chapter ~~26.1-42~~ 26.1-42.1 unless the board of directors by appropriate resolution, certified to and filed with the commissioner on or before December thirty-first following the issuance of its certificate of authority, elects to become a member. If there is an affirmative election, the company becomes a member of the insurance guaranty association effective July first of the following year. The election is irrevocable. In absence of a timely election, no policyholder, claimant, or creditor of the company may receive any payment by the insurance guaranty association.

SECTION 3. AMENDMENT. Subdivision b of subsection 3 of section 26.1-40-15.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. There is an applicable policy or bond, but the insurer or issuer thereof refuses to provide coverage, denies coverage, or is or becomes insolvent as defined in ~~subsection 4 of section 26.1-42-02~~ 26.1-42.1-02.

SECTION 4. AMENDMENT. Subsection 3 of section 26.1-40-15.5 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Whenever~~ If an insurer makes payment under uninsured or underinsured motorist coverages because of an insurer insolvency, as defined in ~~subsection 4 of section 26.1-42-03~~ 26.1-42.1-02, the paying insurer's rights of reimbursement and subrogation do not include any rights of recovery against the insured of the insolvent insurer, ~~nor~~ or against the North Dakota guaranty fund, except for the amount ~~which~~ that is in excess of the limits of liability of the policy of the insolvent insurer.

SECTION 5. AMENDMENT. Subsection 1 of section 26.1-41-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Basic no-fault insurers authorized to provide basic no-fault benefits in this state shall organize, participate in, and maintain an assigned claims plan to provide that an injured person who suffers economic loss and is eligible for basic no-fault benefits under section 26.1-41-06, other than a person not entitled to benefits under section 26.1-41-07, may obtain basic no-fault benefits through the plan if:
 - a. Basic no-fault benefits are not applicable to the injury for some reason other than those specified in section 26.1-41-07; or
 - b. Basic no-fault benefits applicable to the injury are inadequate to provide the contracted-for benefits because of financial inability of a basic no-fault insurer to fulfill its obligations.

Payments made by the assigned claims plan pursuant to this subsection constitute covered claims under chapter ~~26.1-42~~ 26.1-42.1.

SECTION 6. Chapter 26.1-42.1 of the North Dakota Century Code is created and enacted as follows:

26.1-42.1-01. Scope. This chapter applies to every kind of direct insurance, except:

1. Life, annuity, health, or disability insurance;
2. Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks;
3. Fidelity or surety bonds or any other bonding obligations;
4. Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
5. Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property; for indemnification for repair, replacement, or service; for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear; or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits;

6. Title insurance;
7. Ocean marine insurance;
8. Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of that insurer, which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk; or
9. Any insurance provided by or guaranteed by government.

26.1-42.1-02. Definitions. As used in this chapter:

1. "Affiliate" means a person who directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December thirty-first of the year immediately following the date the insurer becomes an insolvent insurer.
2. "Association" means the North Dakota insurance guaranty association created under section 26.1-42.1-03.
3. "Claimant" means any insured making a first party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
4. "Control" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing at least ten percent of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
5. "Covered claim" means an unpaid claim, including an unpaid claim for unearned premiums, submitted by a claimant, that arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies, issued by an insurer, if this insurer becomes an insolvent insurer after the effective date of this chapter and the claimant or insured is a resident of this state at the time of the insured event; provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event; or the claim is a first-party claim for damage to property with a permanent location in this state. The term does not include:
 - a. Any amount awarded as punitive or exemplary damages;
 - b. Any amount sought as a return of premium under any retrospective rating plan;
 - c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, as reinsurance recoveries, as contribution, as indemnification, or otherwise. A

claim under this subdivision for any amount due any reinsurer, insurer, insurance pool, or underwriting association may not be asserted against a person insured under a policy issued by an insolvent insurer other than to the extent the claim exceeds the association obligation limitations set forth in section 26.1-42.1-05;

- d. Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees;
 - e. Any first-party claim by an insured whose net worth exceeds ten million dollars on December thirty-first of the year immediately following the date the insurer becomes an insolvent insurer; provided that an insured's net worth on that date is deemed to include the aggregate net worth of the insured and all of the insured's subsidiaries as calculated on a consolidated basis; and
 - f. Any first-party claim by an insured that is an affiliate of the insolvent insurer.
6. "Insolvent insurer" means an insurer licensed to transact insurance in this state at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation was entered after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.
7. "Member insurer" means any person, except a county mutual insurance company, that writes any kind of insurance to which this chapter applies under section 26.1-42.1-01, including the exchange of reciprocal or interinsurance contracts and that is licensed to transact insurance in this state. An insurer shall cease to be a member insurer on the day following the termination or expiration of the insurer's license to transact the kinds of insurance to which this chapter applies, however the insurer remains liable as a member insurer for every obligation, including an obligation for assessments levied before the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer that became an insolvent insurer before the termination or expiration of that insurer's license.
8. "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums on these policies and dividends paid or credited to policyholders on this direct business. The term does not include premiums on contracts between insurers or reinsurers.

26.1-42.1-03. Creation of the association. A nonprofit unincorporated legal entity known as the North Dakota insurance guaranty association is created. Every insurer defined as a member insurer in section 26.1-42.1-02 shall be and remain a member of the association as a condition of that insurer's authority to transact insurance in this state. The association shall perform association functions under a plan of operation established and approved under section 26.1-42.1-05 and shall exercise association powers through a board of directors established under section 26.1-42.1-04.

26.1-42.1-04. Board of directors.

1. The board of directors of the association consists of a minimum of five and a maximum of nine persons serving terms as established in the plan of operation. The members of the board must be selected by member insurers, subject to the approval of the commissioner. A vacancy on the board must be filled for the remaining period of the unexpired term by a majority vote of the remaining board members, subject to the approval of the commissioner. If the initial board members are not selected within sixty days after the effective date of this Act, the commissioner may appoint the initial members of the board.
2. In approving selections to the board, the commissioner shall consider at least whether all member insurers are fairly represented.
3. Every member of the board may be reimbursed from the assets of the association for expenses incurred by the member in the course of the member's official duties.

26.1-42.1-05. Powers and duties of the association.

1. The association:
 - a. Shall pay covered claims existing before the order of liquidation and arising within thirty days after the order of liquidation or before the policy expiration date if less than thirty days after the order of liquidation, or before the insured replaces the policy or causes the policy's cancellation, if the insured does so within thirty days of the order of liquidation. The obligation must be satisfied by paying to the claimant an amount as follows:
 - (1) An amount not exceeding ten thousand dollars per policy for a covered claim for the return of unearned premium.
 - (2) An amount not exceeding three hundred thousand dollars per claim for all other covered claims.
 - b. Is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provision of this chapter, a covered claim does not include a claim filed with the association after the earlier of eighteen months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and a claim does not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred, but not reported, losses.

Any obligation of the association to defend an insured on a covered claim ceases upon the association's payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit or upon the association's tender of that amount.

Notwithstanding any other provision of this chapter, an obligation of the association to any person ceases when ten million dollars is paid in the aggregate by the association and any one or more associations similar to the association of any other state or states or any property and casualty security fund that obtains contributions from insurers on a preinsolvency basis, to or on behalf of any insured and the insured's affiliates on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer. For purposes of this section, the term "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in any manner the association deems equitable.

- c. Is deemed the insurer only to the extent of the association's obligation on the covered claims and to that extent, subject to the limitations provided in this chapter, has all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations. The association may not be deemed the insolvent insurer for any purpose relating to the issue of whether the association is amenable to the personal jurisdiction of the courts of any state.
- d. Shall assess member insurer's amounts necessary to pay the obligations of the association under subdivision a following an insolvency, the expenses of handling covered claims following an insolvency and other expenses authorized by this chapter. The assessments of each member insurer must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all members insurers for the calendar year preceding the assessment. Each member insurer must be notified of the assessment at least thirty days before the assessment is due. A member insurer may not be assessed in any one year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available must be prorated and the unpaid portion must be paid as soon as funds become available. The association shall pay claims in any order the association determines reasonable, including the payment of claims as the claims are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance;

provided, however, that during the period of deferment, dividends may not be paid to shareholders or policyholders. Deferred assessments must be paid when payment will not reduce capital or surplus below required minimums. Deferred assessment payments must be refunded to those companies receiving larger assessments by virtue of this deferment, or at the election of any such company, credited against future assessments. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer.

- e. Shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases, and judgments to which the insolvent insurer or the insolvent insurer's insureds were parties to determine the extent to which these settlements, releases, and judgments may be properly contested. The association may appoint and direct legal counsel retained under liability insurance policies for the defense of covered claims.
- f. Shall handle claims through the association's employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but this designation may be declined by a member insurer.
- g. Shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

2. The association may:

- a. Employ or retain persons necessary to handle claims and perform other duties of the association;
- b. Borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;
- c. Sue or be sued, and this power to sue includes the power and right to intervene as a party before any court in this state which has jurisdiction over an insolvent insurer;
- d. Negotiate and become a party to contracts that are necessary to carry out the purposes of this chapter;
- e. Perform acts that are necessary or proper to effectuate the purpose of this chapter; and
- f. Refund to the member insurers in proportion to the contribution of each member insurer that amount by which the assets of the association exceed the liabilities, if at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities for the coming year as estimated by the board.

3. Except for actions by member insurers aggrieved by final actions or decisions by the association pursuant to subdivision h of subsection 3 of section 26.1-42.1-06, all claims for relief relating to this chapter against the association must be brought in the courts of this state. These courts have exclusive jurisdiction over all actions relating to this chapter against the association. Exclusive venue in any action by or against the association is in the district courts of this state. The association, at its option, may waive this exclusive venue as to specific actions.

26.1-42.1-06. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments to this plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments become effective upon written approval by the commissioner. If the association fails to submit a suitable plan of operation within ninety days following the effective date of this Act, or if at any time after the effective date of this Act the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt rules as necessary or advisable to implement this chapter. These rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
2. All member insurers shall comply with the plan of operation.
3. The plan of operation must:
 - a. Establish procedures by which all the powers and duties of the association under section 26.1-42.1-05 will be performed.
 - b. Establish procedures for handling assets of the association.
 - c. Establish procedures for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer.
 - d. Establish the amount and method of reimbursing members of the board of directors under section 26.1-42.1-04.
 - e. Establish procedures by which claims may be filed with the association, if necessary, and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer are deemed notice to the association of the association's agent and periodically a list of claims must be submitted to the association or similar organization in another state by the receiver or liquidator.
 - f. Establish regular places and times for meetings of the board of directors.
 - g. Establish procedures for records to be kept of all financial transactions of the association, the association's agents and the board of directors.

- h. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision.
 - i. Establish procedures by which selections for the board of directors will be submitted to the commissioner.
 - j. Contain provisions necessary or proper for the execution of the powers and duties of the association.
- 4. The plan of operation may provide that powers and duties of the association, except those under subdivision d of subsection 1 of section 26.1-42.1-05 and subdivision b of subsection 2 of section 26.1-42.1-05, are delegated to a corporation, association, or other organization that performs or will perform functions similar to those of this association or this association's equivalent in two or more states. This corporation, association, or organization must be reimbursed as a servicing facility would be reimbursed and must be paid for performance of any other functions of the association. A delegation under this subsection takes effect only with the approval of the board of directors and the commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and less effective than that provided by this chapter.

26.1-42.1-07. Duties and powers of the commissioner.

- 1. The commissioner shall:
 - a. Notify the association of the existence of an insolvent insurer within three days after the commissioner receives notice of the determination of the insolvency. The association is entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that this complaint is filed with a court of competent jurisdiction.
 - b. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.
- 2. The commissioner may:
 - a. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. In the alternative, the commissioner may levy a fine on any member insurer that fails to pay an assessment when due. A fine under this subdivision may not exceed five percent of the unpaid assessment per month, except that a fine may not be less than one hundred dollars per month.
 - b. Revoke the designation of any servicing facility if the commissioner finds claims are being handled unsatisfactorily.

26.1-42.1-08. Effect of paid claims.

1. Any person recovering under this chapter is deemed to have assigned that person's rights under the policy to the association to the extent of recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as that insured or claimant would have been required to cooperate with the insolvent insurer. The association does not have a claim for relief against the insured of the insolvent insurer for any sums the association paid out except for claims for relief the insolvent insurer would have had if the sums had been paid by the insolvent insurer and except as provided in subsection 2. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association do not reduce the liability of the insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

2. The association may recover from the following persons the amount of any covered claim paid on behalf of that person pursuant to this chapter:
 - a. Any insured whose net worth on December thirty-first of the year immediately preceding the date the insurer becomes an insolvent insurer exceeds twenty-five million dollars and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter;

 - b. Any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this chapter; and

 - c. Any insured who is not a resident of this state at the time of the insured event, except for first-party covered claims for property damage to an insured's property that is permanently located in this state.

3. The association any any similar organization in another state are recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by the association or similar organization on covered claims obligations as determined under this chapter or similar laws in other states and receive dividends and any other distributions at the priority set forth in section 26.1-06.1-41. The receiver, liquidator, or statutory successor of an insolvent insurer is bound by determinations of covered claim eligibility under this chapter and by settlements of claims made by the association or a similar organization in another state. The court with jurisdiction shall grant these claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer.

4. The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which preserve the rights of the association against the assets of the insolvent insurer.

26.1-42.1-09. Exhaustion of other coverage.

1. Any person with a claim against an insurer, regardless of whether that insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, is required to exhaust first that person's right under that policy. Any amount payable on a covered claim under this chapter must be reduced by the amount of any recovery under the insurance policy.
2. Any person with a claim that may be recovered under more than one insurance guaranty association or equivalent shall seek recovery first from the association of the place of residence of the insured except that if the claim is a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property. Any recovery under this chapter must be reduced by the amount of recovery from any other insurance guaranty association or equivalent.

26.1-42.1-10. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies:

1. The board of directors, upon majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
2. The board of directors, upon majority vote, may make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency.
3. The board of directors, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, may prepare a report on the history and causes of the insolvency, based on the information available to the association and submit this report to the commissioner.

26.1-42.1-11. Examination of the association. The association is subject to examination and regulation by the commissioner. The board of directors shall submit, by March thirty-first of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

26.1-42.1-12. Tax exemption. The association is exempt from payment of all fees and all taxes levied by this state or any political subdivision except taxes levied on property.

26.1-42.1-13. Recognition of assessments in rates. The rate and premiums charged for insurance policies to which this chapter applies must include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association. These rates may not be determined to be excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

26.1-42.1-14. Immunity. There is no liability on the part of and no claim for relief may arise against any member insurer, the association or the association's agents or employees, the board of directors, or any person serving as a representative of any director, or the commissioner or the commissioner's

representatives for any action taken or any failure to act by these entities in the performance of their powers and duties under this chapter.

26.1-42.1-15. Stay of proceedings. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state, subject to waiver by the association in specific cases involving covered claims, must be stayed until the last day fixed by the court for the filing of claims and additional time after this as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or the insolvent insurer's failure to defend an insured, the association on its own behalf or on behalf of such insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and may defend the claim on the merits. The liquidator, receiver, or statutory successor of an insolvent insurer covered by this chapter shall permit access by the board or the board's authorized representative to the insolvent insurer's records that are necessary for the board in carrying out the board's functions under this chapter with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or the board's representative with copies of these records upon the request by the board and at the expense of the board.

SECTION 7. AMENDMENT. Subsection 3 of section 26.1-46-04 of the North Dakota Century Code is amended and reenacted as follows:

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~~ 26.1-42.1.

SECTION 8. REPEAL. Chapter 26.1-42 of the North Dakota Century Code is repealed.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 260

HOUSE BILL NO. 1238

(Representative Klemin)

MUTUAL INSURANCE COMPANY BYLAWS AND VOTING AND EXEMPTIONS FROM PROCESS

AN ACT to amend and reenact sections 26.1-12-06, 26.1-12-14, 26.1-12-16, and subsection 3 of section 28-22-03.1 of the North Dakota Century Code, relating to mutual insurance company bylaws, domestic mutual insurance company voting, and absolute exemptions of Roth individual retirement accounts in process, levy, and sale proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹³ **SECTION 1. AMENDMENT.** Section 26.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-06. Bylaws of mutual company - Meetings - Notice - Quorum. The bylaws of any mutual insurance company organized under this chapter or chapter 26.1-05 must prescribe the manner of notification to members of all corporation meetings of members and must prescribe what constitutes a quorum of members. A quorum is those members present in person or represented by written proxies. A majority of those voting is sufficient to approve or reject any proposal submitted at any annual or special meeting. Every member of the company is entitled to one vote only. Every member must be notified of the time and place of the holding of the meetings of the company by a written notice or by an imprint on ~~the back of~~ each policy, receipt, or certificate of renewal. In addition, a notice of any annual or special meeting must be published in the official newspaper of the county in which the principal office of the company is located. The notice must be published at least twice, the first publication to be made at least sixty days before the meeting. If a special meeting of members is called, a notice of the time, place, and object of the meeting must be mailed to all members at least sixty days before the meeting.

SECTION 2. AMENDMENT. Section 26.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-14. Membership in domestic mutual company - Votes of members - Notice of meetings. Every member ~~insured by~~ of a domestic mutual insurance company organized under this chapter is a member of the company while the policy is in force. A member may be an insured or owner of a policy as provided in the bylaws of the company. Every member of the company is entitled to one vote ~~or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as may be provided in the bylaws of the company.~~ Every member must be notified of the time and place of the holding of the meetings of the company by a written notice or by an imprint on ~~the back of~~ each policy, receipt, or certificate of renewal as follows:

¹⁹³ Section 26.1-12-06 was also amended by section 5 of House Bill No. 1175, chapter 254.

The ~~assured member~~ is hereby notified that by virtue of this policy ~~the assured~~ is you are a member of _____ mutual insurance company, and that the annual meetings of such company are held at its home office on the _____ day of _____ in each year at _____ o'clock.

When the blanks in the notice are properly filled, the notice is sufficient.

SECTION 3. AMENDMENT. Section 26.1-12-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-16. Vote by proxy permitted - Manner of voting by proxy. Members of a mutual insurance company may vote by proxy dated and executed within three months prior to the meeting at which the proxy is to be used when returned and recorded on the books of the company three days or more before the meeting. A person may not as proxy or otherwise cast more than fifty votes, and an officer, personally or by another, may not ask for, receive, procure to be obtained, or use, a proxy vote. This section does not apply to state mutual hail insurance companies a proxy committee duly established by the bylaws comprised of no less than three members appointed by the board of directors whose duty is to cast the vote by proxy of members at any duly called annual or special meeting of the mutual insurance company.

¹⁹⁴ **SECTION 4. AMENDMENT.** Subsection 3 of section 28-22-03.1 of the 1997 Supplement to 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, Roth individual retirement accounts under section 408A of the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], 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

¹⁹⁴ Section 28-22-03.1 was also amended by section 1 of Senate Bill No. 2241, chapter 285.

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 March 11, 1999
Filed March 11, 1999

CHAPTER 261

SENATE BILL NO. 2221

(Senator Mutch)
(Representative Berg)

MUTUAL INSURANCE COMPANIES

AN ACT to create and enact three new sections to chapter 26.1-12.1 of the North Dakota Century Code, relating to foreign mutual insurance holding companies; and to amend and reenact sections 26.1-12.1-01 and 26.1-12.1-09 of the North Dakota Century Code, relating to definitions and approval of a reorganization by eligible members of a domestic mutual insurance company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-12.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-12.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of insurance.
2. "Domestic mutual insurance company" or "mutual insurance company" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.
3. "Domestic mutual insurance holding company" or "mutual insurance holding company" means a company formed under section 26.1-12.1-02.
4. "Eligible member" means a policyholder whose policy is in force as of the record date or member as defined under the bylaws or articles of incorporation of the reorganizing insurer. Unless otherwise provided in the reorganization plan, a person insured under a certificate issued under a group policy is not an eligible member.
5. "Foreign mutual insurance company" means a mutual insurance company incorporated under the laws of another state.
6. "Foreign mutual insurance holding company" means a company formed under provisions of the laws of another state similar to those contained in this chapter.
7. "Membership interest" means all interests of eligible members of the reorganizing insurer, including rights to vote and to participate in any distribution of surplus, whether or not incident to the company's liquidation. It does not include the contractual rights remaining with the reorganized insurance company.
4. "~~Mutual insurance company~~" means a mutual insurance company incorporated under the laws of this state pursuant to chapter 26.1-12 or other prior provisions of this title.

5. ~~"Mutual insurance holding company" means a company formed under section 26.1-12.1-02.~~
6. 8. "Plan of reorganization" means a plan to engage or participate in a reorganization subject to this chapter.
7. 9. "Policy" means a policy or contract of insurance issued by a mutual insurance company, including an annuity contract.
8. 10. "Record date" means the date the reorganizing insurer's board of directors adopts a plan of reorganization or some other date specified as the record date in the plan of reorganization and approved by the commissioner.
9. 11. "Reorganization" means any plan or transaction described in section 26.1-12.1-02 or 26.1-12.1-03, or section 3 of this Act, or any change in the reorganized insurer's articles of incorporation or bylaws which is a material change to the plan of reorganization filed and approved by the commissioner affecting the ability of the reorganizing insurer to meet the standards described in section 26.1-12.1-06.
40. 12. "Reorganized insurance company" means a mutual insurance company that has completed a reorganization to a stock company that is subject to this chapter. A domestic or foreign mutual insurance company that has completed a reorganization to a stock company may retain the word "mutual" in its name so long as it is clearly identified with its name that it is a stock insurance subsidiary of a domestic or foreign mutual insurance holding company.
44. 13. "Reorganizing insurer" means a mutual insurance company, whether domestic or foreign, seeking to participate, or participating, in merger or other reorganization as defined in this chapter.

SECTION 2. AMENDMENT. Section 26.1-12.1-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-12.1-09. Approval by eligible members. The plan of reorganization must be adopted upon receiving the affirmative vote of a majority of the votes cast by eligible members. Eligible members may vote in person or by proxy. The form of any proxy along with a copy or summary of the plan which accompanied the notice to eligible members must be filed with and approved by the commissioner. The number of votes each eligible member may cast must be determined by the ~~converting~~ reorganizing insurer's domestic mutual insurance company's bylaws. If the bylaws are silent, each eligible member may cast one vote. The plan must be approved as follows:

1. In the case of formation of a mutual insurance holding company under section 26.1-12.1-02, the reorganization plan must be approved by the affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing ~~insurer~~ domestic mutual insurance company; and
2. In the case of a merger under section 26.1-12.1-03, the reorganization plan must be approved by an affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the reorganizing ~~insurer~~ domestic mutual insurance company and by an

affirmative vote of a majority of the votes cast by no less than ten percent of the eligible members of the mutual insurance holding company into which the policyholders' membership interests are to be merged, provided that the vote of the eligible members of the mutual insurance holding company may not be required if the commissioner determines that the merger would not be material to the financial condition of the mutual insurance holding company.

SECTION 3. Three new sections to chapter 26.1-12.1 of the North Dakota Century Code are created and enacted as follows:

Foreign mutual insurance holding company - Reorganization. A domestic mutual insurance company may reorganize with a foreign mutual insurance holding company that is created or exists under the laws of another state by complying with chapter 26.1-12.1. The commissioner may waive any provision of chapter 26.1-12.1 if the commissioner determines the provision to be unnecessary for the protection of eligible members.

A plan of reorganization under this section must comply with the requirements and standards of section 26.1-12.1-06 and be approved by the eligible members of the domestic mutual insurance company as a reorganizing insurer in accordance with subsection 1 of section 26.1-12.1-09. A domestic mutual insurance company seeking to reorganize under this section may at the same time redomesticate to another state by complying with section 26.1-05-07.3 and the applicable requirements of the state to which it seeks to transfer domicile.

Existing domestic mutual insurance holding company - Reorganization. An existing domestic mutual insurance holding company, with the prior approval of the commissioner pursuant to, and under the provisions of section 26.1-12.1-06, may:

1. Acquire direct or indirect ownership of a foreign mutual insurance company as a reorganizing insurer in compliance with the laws of its state of domicile; and
2. Grant membership interest and equity rights in the domestic mutual insurance holding company to eligible members of a foreign mutual insurance company as a reorganizing insurer that merges with a direct or indirect domestic or foreign subsidiary of the domestic mutual insurance holding company, or is otherwise acquired by the domestic mutual insurance holding company.

The commissioner shall consider the fairness of the terms and conditions of the transaction, whether the interests of the eligible members of the domestic mutual insurance holding company that is a party to the transaction are protected in accordance with this chapter. A plan of reorganization under this section must be approved by the eligible members of the domestic mutual insurance holding company in accordance with subsection 2 of section 26.1-12.1-09.

Concurrent reorganization - Domestic or foreign. The concurrent reorganization of a domestic mutual insurance company with one or more mutual insurance companies, whether domestic or foreign, into a single mutual insurance holding company structure, whether domestic or foreign, may be accomplished by a joint application and a joint plan of reorganization and may be approved by complying with the requirements and standards of section 26.1-12.1-06 by the commissioner following a hearing as provided for in this chapter. The commissioner may allow such other procedures to avoid unnecessary or duplicative costs and efforts in satisfying the requirements of this chapter and effectuating the reorganization.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 262**SENATE BILL NO. 2295**

(Senator W. Stenehjem)

**INSURANCE COMPANY MEDICARE CLAIM
ADMINISTRATION**

AN ACT to amend and reenact subsection 5 of section 26.1-17-33.1 of the North Dakota Century Code, relating to formation of insurance companies for administration of medicare claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 26.1-17-33.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A nonprofit mutual insurance company may form a stock ~~insurance~~ company for the purpose of administering medicare claims.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 263

SENATE BILL NO. 2407

(Senators D. Mathern, Flakoll)

RENTAL CAR AGENCY INSURANCE SALES

AN ACT to create and enact a new section to chapter 26.1-26 of the North Dakota Century Code, relating to insurance sales by rental car agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Insurance license for automobile rental agencies - Exception. A license as an insurance agent or limited insurance representative is not required for the counter sales personnel of an automobile rental company or its franchisee if:

1. The automobile rental company is appropriately licensed in this state under section 26.1-26-08 or is affiliated with an appropriately licensed North Dakota agent.
2. The coverage offered by the counter sales personnel is limited to the following:
 - a. Personal accident insurance covering the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;
 - b. Supplemental liability insurance that must include uninsured and underinsured motorist coverage, either offered separately or in combination with other liability insurance, and that provides coverage to renters and other authorized drivers for liability arising from the operation of the rental vehicle;
 - c. Personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period;
 - d. Roadside assistance and emergency sickness protection programs; and
 - e. Any other coverage that a rental company offers in connection with and incidental to the rental of vehicles.
3. The rental period is ninety days or less.
4. The automobile rental company files an acknowledgement with the commissioner that its counter sales personnel act on its behalf and that it is responsible for any representations made by the counter sales personnel relating to insurance products offered through the automobile

rental company or its franchisee. The acknowledgement must state that the commissioner has the right to take any administrative action contemplated in this title, including revocation or suspension of the license required under subsection 1.

5. The automobile rental company provides basic training to counter sales personnel in the insurance products offered under this section. The training must require counter sales personnel to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed agents employed by the automobile rental company or to written brochures or other materials that:
 - a. Summarize the material terms of the coverage, including the identity of the insurer;
 - b. Disclose that the policies offered by the automobile rental company may duplicate coverage already provided by other insurance the renter may have;
 - c. State that the purchase of insurance is not required to rent the vehicle; and
 - d. Describes the process of filing a claim.
6. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the automobile rental company from including the insurance products in an overall employee performance compensation incentive program.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 264

HOUSE BILL NO. 1136

(Human Services Committee)

(At the request of the State Board of Medical Examiners)

UTILIZATION REVIEW DETERMINATIONS

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to managed care for workers' compensation; to amend and reenact subsection 4 of section 26.1-26.4-02 and subsection 8 of section 26.1-26.4-04 of the North Dakota Century Code, relating to the definition of utilization review and to minimum standards of utilization review agents; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-26.4-02 of the North Dakota Century Code is amended and reenacted as follows:

4. "Utilization review" means a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services that are subject to state insurance regulation and which are given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.

¹⁹⁵ **SECTION 2. AMENDMENT.** Subsection 8 of section 26.1-26.4-04 of the North Dakota Century Code is amended and reenacted as follows:

8. ~~Physicians or psychologists~~ Psychologists making utilization review determinations shall have current licenses from ~~a state licensing agency in the United States~~ the state board of psychologist examiners. Physicians making utilization review determinations shall have current licenses from the state board of medical examiners.

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

Licensure required for psychologists and physicians performing utilization review. Psychologists making utilization review determinations under sections 65-02-20 and 65-02-21 shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations under 65-02-20 and 65-02-21 shall have current licenses from the state board of medical examiners. This requirement does not apply to psychologists or physicians conducting independent medical examinations under section 65-05-28.

¹⁹⁵ Section 26.1-26.4-04 was also amended by section 4 of Senate Bill No. 2400, chapter 257.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective on August 1, 2000.

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 265

HOUSE BILL NO. 1396

(Representative R. Kelsch)

MENTAL DISORDERS COVERAGE

AN ACT to amend and reenact section 26.1-36-09 of the North Dakota Century Code, relating to insurance coverage for treatment of mental disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁶ **SECTION 1. AMENDMENT.** Section 26.1-36-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09. Group health policy and health service contract mental disorder coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness, which benefits meet or exceed the benefits provided in subsection 2.
2. a. The benefits must be provided for each of the following services: inpatient treatment, treatment by partial hospitalization, residential treatment, and outpatient treatment.
- b. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of ~~sixty~~ forty-five 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~~ under section 52-01-01 and rules of the state department of health pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness. An insurance provider may require an individualized treatment plan from the inpatient treatment service provider which indicates that the course of treatment is the most appropriate and least restrictive form of treatment available in the community.
- c. In the case of benefits provided for partial hospitalization ~~or residential treatment~~, 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~~ Partial

¹⁹⁶ Section 26.1-36-09 was also amended by section 1 of Senate Bill No. 2213, chapter 266.

hospitalization must be provided by a hospital as defined in ~~subsection 25 of~~ under section 52-01-01 and rules of the state department of health 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; ~~or by a residential treatment program.~~ 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.

- d. ~~Benefits must be provided for a combination of inpatient hospitalization, partial hospitalization, and residential treatment~~ In the case of benefits provided for residential treatment, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section in any calendar year. Residential treatment services must be provided by a hospital as defined under section 52-01-01 and rules of the state department of health; 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; or by a residential treatment program. For services provided in a regional human service center, charges must be reasonably similar to the charges for care provided by a hospital as defined in this subsection.
- e. Any individual receiving residential treatment services who requires residential treatment service beyond the minimum of one hundred twenty days may trade unused patient treatment benefits provided for under subdivision b. 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 or a~~ residential treatment program; provided, however, that no more than ~~forty-six~~ twenty-three days of the inpatient treatment benefits required by this section may be traded for ~~treatment by partial hospitalization or residential treatment services.~~
- e. f. (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 independent clinical social worker.
- (2) A person who is qualified for third-party payment by the board of social work examiners on August 1, 1997, is exempt from paragraph 1.
- (3) 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.

- (4) 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.
 - (5) If the services are provided by a provider outside a preferred provider network without a referral from within the network, the insurance company, nonprofit health service corporation, or health maintenance organization may establish a copayment greater than twenty percent for only those hours after the first five hours in any calendar year.
- ~~f.~~ g. "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.
- ~~g.~~ h. "Residential treatment" has the same meaning as provided in section 25-03.2-01; but only applies to individuals under twenty-one years of age.
3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 266

SENATE BILL NO. 2213

(Senators DeMers, W. Stenehjem, Watne)
(Representatives Gulleson, Svedjan, Price)

MENTAL HEALTH TREATMENT COVERAGE

AN ACT to amend and reenact paragraph 1 of subdivision e of subsection 2 of section 26.1-36-09 of the North Dakota Century Code, relating to group insurance coverage for licensed professional clinical counselors providing outpatient mental health treatment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. AMENDMENT.** Paragraph 1 of subdivision e of subsection 2 of section 26.1-36-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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, a licensed professional clinical counselor who is qualified in the clinical mental health counseling specialty in this state, or a licensed independent clinical social worker.

Approved March 18, 1999
Filed March 19, 1999

¹⁹⁷ Section 26.1-36-09 was also amended by section 1 of House Bill No. 1396, chapter 265.

CHAPTER 267

HOUSE BILL NO. 1297

(Representatives Sandvig, Rose, Wentz)
(Senators DeMers, Krauter, Thane)

MAMMOGRAM COVERAGE

AN ACT to amend and reenact sections 26.1-36-09.1 and 54-52.1-04.4 of the North Dakota Century Code, relating to health insurance and public employee retirement system coverage of mammograms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09.1. Health insurance policy and health service contract - Mammogram examination coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any person covered under the policy or contract for:
 - a. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.
 - b. One mammogram examination every ~~two years~~ year, or more frequently if ordered by a physician, for ~~women~~ each woman who ~~are~~ is at least forty ~~but less than fifty~~ years of age.
 - c. ~~One mammogram examination every year for women age fifty and over.~~
2. This section does not apply to individually guaranteed renewable supplemental, specified disease, long-term care, or other limited benefit policies.

SECTION 2. AMENDMENT. Section 54-52.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-04.4. Insurance to cover mammogram examinations. The board shall provide medical benefits coverage under ~~either~~ a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for:

1. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.

2. One mammogram examination every ~~two years~~ year, or more frequently if ordered by a physician, for ~~women~~ each woman who ~~are~~ is at least forty ~~but less than fifty~~ years of age.
3. ~~One mammogram examination every year for women age fifty and over.~~

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 268

SENATE BILL NO. 2374

(Senators W. Stenehjem, Lee, Thane)
(Representatives Delmore, Kliniske, Poolman)

FOOD FOR INHERITED METABOLIC DISEASE COVERAGE

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to insurance coverage of foods and food products for inherited metabolic diseases; and to amend and reenact section 26.1-36-09.7 of the North Dakota Century Code, relating to removal of the sunset provision of the foods and food products for inherited metabolic diseases insurance coverage law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-09.7 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09.7. ~~(Effective through July 31, 1999)~~ Foods and food products for inherited metabolic diseases.

1. As used in this section:
 - a. "Inherited metabolic disease" means maple syrup urine disease or phenylketonuria.
 - b. "Low protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. The term does not include a natural food that is naturally low in protein.
 - c. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides prescription coverage on an individual, group, blanket, franchise, or association basis, unless the policy or contract provides, for any person covered under the policy or contract, coverage for medical foods and low protein modified food products determined by a physician to be medically necessary for the therapeutic treatment of an inherited metabolic disease.
3. This section applies to any covered individual born after December 31, 1962. This section does not require coverage for low protein modified

food products in excess of three thousand dollars per year for an individual with an inherited metabolic disease of amino acid or organic acid.

4. This section does not require medical benefits coverage for low protein modified food products or medical food for an individual to the extent those benefits are available to that individual under a department of health program.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Insurance to cover foods and food products for inherited metabolic diseases.

The board shall provide medical benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for foods and food products for inherited metabolic diseases in the same manner as provided for under section 26.1-36-09.7.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 269**HOUSE BILL NO. 1452**

(Representative Sveen)

**DENTAL ANESTHESIA AND HOSPITALIZATION
COVERAGE**

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to required insurance coverage for dental anesthesia and hospitalization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Dental anesthesia and hospitalization coverage. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits for anesthesia and hospitalization for dental care provided to a covered individual who is a child under age nine, is severely disabled, or who has a medical condition and requires hospitalization or general anesthesia for dental care treatment. A carrier may require preauthorization of hospitalization for dental care procedures under this section in the same manner preauthorization is required for hospitalization for other covered diseases or conditions. Coverage under this section applies regardless of whether the services are provided in a hospital or an ambulatory surgery center.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Insurance to cover dental anesthesia and hospitalization. The board shall provide medical benefits coverage under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for dental anesthesia and hospitalization in the same manner as provided under section 1 of this Act.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 270

HOUSE BILL NO. 1039

(Legislative Council)

(Insurance and Health Care Committee)

AMBULANCE SERVICES COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to insurance coverage of ambulance services for prehospital emergency medical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Health insurance policy and health service contract - Prehospital emergency medical services.

1. In this section, unless the context or subject matter otherwise requires:
 - a. "Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part.
 - b. "Prehospital emergency medical services" means a service or its personnel either licensed under chapter 23-27 or certified by the state health department.
2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides prehospital emergency medical services benefits on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides prehospital emergency medical services benefits in the case of an emergency medical condition.
3. The coverage required under this section does not require coverage in excess of policy aggregate limits or internal policy limits dealing specifically with prehospital emergency medical services.
4. This section does not prevent an insurance company, nonprofit health service corporation, or health maintenance organization from imposing deductibles, coinsurance, or other cost sharing in relation to benefits for prehospital emergency medical services.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 271

SENATE BILL NO. 2251 (Senator Grindberg)

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

AN ACT to amend and reenact sections 26.1-38.1-01, 26.1-38.1-02, 26.1-38.1-03, 26.1-38.1-05, 26.1-38.1-06, subsection 5 of section 26.1-38.1-07, subsection 3 of section 26.1-38.1-08, sections 26.1-38.1-09, 26.1-38.1-10, 26.1-38.1-11, 26.1-38.1-12, and 26.1-38.1-16 of the North Dakota Century Code, relating to the life and health insurance guaranty association and the related duties and powers of the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-01. Scope.

1. This section provides coverage for the policies and contracts specified in subsection 2:
 - a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees of the persons covered under subdivision b; ~~and~~
 - b. To persons who are owners of or certificate holders under such policies or contracts; ~~or, in the case of other than unallocated annuity contracts; to the persons who are contractholders;~~ and structured settlement annuities, and in each case who
 - (1) Are residents; or
 - (2) Are not residents, but only under all of the following conditions:
 - (a) The ~~insurers~~ insurer that issued such policies or contracts ~~are~~ is domiciled in this state;
 - (b) ~~Such insurers never held a license or certificate of authority in the states in which such persons reside~~ The states in which the persons reside have associations similar to the association created under this chapter;
 - (c) ~~Such states have associations similar to the association created by this chapter; and~~
 - (~~d~~) ~~Such~~ The persons are not eligible for coverage by ~~such associations~~ an association in any other state due to the

fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

- c. For any unallocated annuity contract specified in subsection 2, subdivisions a and b of this subsection do not apply, and this chapter, except as provided in subdivisions e and f of this subsection, provides coverage to:
- (1) Persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan, the sponsor of which has its principal place of business in this state; and
 - (2) Persons who are owners of unallocated annuity contracts issued to or in connection with government lotteries if the owners are residents.
- d. For structured settlement annuities specified in subsection 2, subdivisions a and b of this subsection do not apply, and this chapter, except as provided in subdivisions e and f, provides coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased, if the payee:
- (1) Is a resident, regardless of where the contract owner resides; or
 - (2) Is not a resident, and:
 - (a) The contractowner of the structured settlement annuity is a resident, or the contractowner of the structured settlement annuity is not a resident but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contractowner resides has an association similar to the association created under this chapter; and
 - (b) Neither the payee or beneficiary nor the contractowner is eligible for coverage by the association of the state in which the payee or contractowner resides.
- e. This chapter does not provide coverage to:
- (1) A person who is a payee or beneficiary of a contractowner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or
 - (2) A person covered under subdivision b, if any coverage is provided by the association of another state to the person.
- f. This chapter provides coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person may not be provided coverage under this chapter. In determining the application of the provisions of this

subdivision in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.

2. This chapter provides coverage to the persons specified in subsection 1 for direct, nongroup life, health, ~~or annuity; and supplemental~~ policies or contracts, and supplemental contracts to any of these, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this chapter. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement ~~agreements, lottery contracts~~ annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.
3. This chapter does not provide coverage for:
 - a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the ~~policyholder~~ policyowner or ~~contractholder~~ contractowner;
 - b. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;
 - c. Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - (1) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (2) On and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;
 - d. ~~Any~~ A portion of a policy or contract issued to a plan or program of an employer, association, or similar entity other person to provide life, health, or annuity benefits to its employees or members, or others, to the extent that such plan or program is self-funded or uninsured including benefits payable by an employer association or similar entity other person under:
 - (1) A multiple employer welfare arrangement as defined in ~~section 514 of the Employee Retirement Income Security Act of 1974, as amended~~ 29 U.S.C. section 1144;
 - (2) A minimum premium group insurance plan;

- (3) A stop-loss group insurance plan; or
 - (4) An administrative services only contract;
 - e. Any portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or provides that payment of any fees or allowances be paid to any person, including the policyholder, policyowner or contractholder contractowner, in connection with the service to or administration of such policy or contract;
 - f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
 - g. Any unallocated annuity contract issued to an employee or in connection with a benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan; and
 - h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association; ~~or~~ of natural persons benefit plan or a government lottery;
 - i. A portion of a policy or contract to the extent that the assessments required by section 26.1-38.1-06 with respect to the policy or contract are preempted by federal or state law;
 - j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contractowner or policyowner, including:
 - (1) Claims based on marketing materials;
 - (2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - (3) Misrepresentations of or regarding policy benefits;
 - (4) Extracontractual claims; or
 - (5) A claim for penalties or consequential or incidental damages; and
 - k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer.
4. The benefits ~~for which~~ that the association may become ~~liable~~ obligated to cover may in no event exceed the lesser of:

- a. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;
 - b. With any respect to one life, regardless of the number of policies, or contracts:
 - (1) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
 - (2) One hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values; or
 - (3) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
 - c. With respect to each individual participating in a government retirement benefit plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values; ~~provided, however, that in no event shall the association be liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under this subdivision and subdivision b; or~~
 - d. ~~With respect to any one contractholder covered by an unallocated annuity contract not included in subdivision b, five million dollars in benefits, irrespective of the number of such contracts held by that contractholder.~~ each payee of a structured settlement annuity or beneficiary, or beneficiaries of the payee if deceased, one hundred thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values;
 - e. With respect to one contractowner provided coverage under subparagraph d of paragraph 2 of subdivision b of subsection 1; or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subdivision c, five million dollars in benefits, irrespective of the number of contracts with respect to the contractowner or plan sponsor. However, in the case in which one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contracts or contracts is held by a plan sponsor whose principal place of business is in this state and in no event is the association obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts.
5. However, under subsection 4 in no event shall the association be obligated to cover more than an aggregate of three hundred thousand dollars in benefits with respect to any one life under subdivision b of

subsection 4, or with respect to one owner of multiple nongroup policies of life insurance, whether the policyowner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than five million dollars in benefits, regardless of the number of policies and contracts held by the owner.

6. The limitations set forth in subsection 4 are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.
7. In performing its obligations to provide coverage under this chapter, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

SECTION 2. AMENDMENT. Section 26.1-38.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-02. Definitions. As used in this chapter:

1. "Account" means either of the two accounts created under section 26.1-38.1-03.
2. "Association" means the North Dakota life and health insurance guaranty association created under section 26.1-38.1-03.
3. "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed under which an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.
4. "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.
5. "Called assessment" or "called" when used in the context of assessments means that a notice was issued by the association to member insurers requiring that an authorized assessment be paid within the timeframe set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
6. "Commissioner" means the insurance commissioner ~~of insurance~~ of this state.
4. 7. "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 26.1-38.1-01.

5. 8. "Covered policy" means any policy or contract ~~within the scope of or~~ portion of a policy or contract for which coverage is provided under this chapter under section 26.1-38.1-01.
9. 9. "Extracontractual claims" include claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorneys' fees and costs.
6. 10. "Impaired insurer" means a member insurer ~~which that,~~ after July 1, 1989, is not an insolvent insurer, and ~~is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or~~ is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
7. 11. "Insolvent insurer" means a member insurer which, after July 1, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
8. 12. "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~~ other person 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
 - g. Any entity similar to any of the above.
9. 13. "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, incorporated, or any successor thereto.
14. "Owner" of a policy or contract and "policyowner" and "contractowner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms owner, contractowner, and policyowner do not include persons with a mere beneficial interest in a policy or contract.

40. 15. "Person" means any individual, corporation, limited liability company, partnership, association, governmental entity, or voluntary organization.
16. "Plan sponsor" means:
- a. The employer in the case of a benefit plan established or maintained by a single employer;
 - b. The employee organization in the case of a benefit plan established or maintained by an employee organization; or
 - c. In the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.
44. 17. "Premiums" means amounts or considerations, by whatever named called, received in any calendar year on covered policies or contracts less returned premiums, considerations, and deposits returned thereon, and less dividends and experience credits ~~thereon~~. "Premiums" do not include any amounts or considerations received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsections 2 and 3 of section 26.1-38.1-01 and except that assessable premium shall not be reduced on account of subdivision c of subsection 3 of section 26.1-38.1-01, relating to interest limitations, and subsection 3 of section 26.1-38.1-01, relating to limitations with respect to any one individual, any one participant, and any one ~~contractholder~~; ~~provided that "premiums" do~~ contractowner. "Premiums" do not include ~~any premiums~~:
- a. Premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code; or
 - b. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policyowner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of five million dollars with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.
18. "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the nature persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the state in which the primary executive and administrative headquarters of the entity is located; in which the principal office of the chief executive officer of the entity is located; in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings; in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings; from which the management of the overall operations of the entity is directed; and in the case of a benefit plan

sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors. However, in the case of a plan sponsor, if more than fifty-percent of the participants in the benefit plan are employed in a single state, that state is deemed to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor of a benefit plan described in subdivision c of subsection 16 is deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, is deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

19. "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conversation, rehabilitation, or liquidation of the insurer.
- ~~42.~~ 20. "Resident" means any person to whom a contractual obligation is owed and who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person must be its principal place of business. Citizens of the United States who are residents of foreign countries, or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created under this chapter, are deemed residents of the state of domicile of the insurer that issued the policies or contracts.
21. "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
22. "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.
- ~~43.~~ 23. "Supplemental contract" means any written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract proceeds.
- ~~44.~~ 24. "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

SECTION 3. AMENDMENT. Section 26.1-38.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-03. Creation of the association.

1. There is created a nonprofit legal entity to be known as the North Dakota life and health insurance guaranty association. All member insurers must be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 26.1-38.1-07 and shall exercise its powers through a board of directors established under section 26.1-38.1-04. For purposes of administration and assessment, the association shall maintain two accounts:
 - a. The life insurance and annuity account ~~which~~ that includes the following subaccounts:
 - (1) Life insurance account;
 - (2) Annuity account, which includes annuity contracts owned by a governmental retirement plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and
 - (3) Unallocated annuity account ~~which~~ that includes contracts ~~qualified~~ owned by a governmental retirement benefit plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code.
 - b. The health insurance account.
2. The association shall come under the immediate supervision of the commissioner ~~of insurance~~ and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association.

SECTION 4. AMENDMENT. Section 26.1-38.1-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-05. Powers and duties of the association.

1. If a member insurer is an impaired ~~domestic~~ insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and that are approved by the commissioner; ~~and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:~~
 - a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or

- b. Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision a and assume payment of the contractual obligations of the impaired insurer pending action under subdivision a; ~~or.~~
 - e. ~~Loan money to the impaired insurer.~~
2. a. If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in subdivision b, the association shall, in its discretion, either:
 - (1) Take any of the actions specified in subsection 1, subject to the conditions therein; or
 - (2) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.
 - b. The association is subject to the requirements of subdivision a only if:
 - (1) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:
 - (a) The delinquency proceeding shall not be dismissed;
 - (b) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and
 - (c) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and
 - (2) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or
 - (3) If the impaired insurer is a foreign or alien insurer,
 - (a) It has been prohibited from soliciting or accepting new business in this state;

- ~~(b)~~ Its certificate of authority has been suspended or revoked in this state;
 - ~~(c)~~ A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.
 - 3. If a member insurer is an insolvent insurer, the association ~~shall~~, in its discretion, either shall:
 - a. Provide the moneys, pledges, loans, notes, guarantees, or other means as are reasonably necessary to:
 - (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
 - (2) Assure payment of the contractual obligations of the insolvent insurer; ~~and~~
 - ~~(3) Provide such moneys, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or~~
 - b. ~~With respect only to life and health insurance policies, provide~~ Provide benefits and coverage in accordance with subsection 4. the following provisions:
- 4. ~~When proceeding under paragraph 2 of subdivision a of subsection 2 or subdivision b of subsection 3, the association shall, with respect to only life and health insurance policies:~~
 - a. (1) Assure With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:
 - ~~(1)~~ (a) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies and contracts.
 - ~~(2)~~ (b) With respect to ~~individual~~ nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under such policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies or contracts.
 - b. (2) Make diligent efforts to provide all known insureds or ~~group policyholders~~ annuitants for nongroup policies and contracts, or group policyowners with respect to group policies and

contracts, thirty days' notice of the termination of the benefits provided.

- e- (3) With respect to ~~individual~~ nongroup life and health insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, ~~make available~~ substitute coverage on an individual basis in accordance with the provisions of ~~subdivision d~~ paragraph 4, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.
 - d- (a) In providing the substitute coverage required under ~~subdivision e~~ this paragraph, the association may offer either to reissue the terminated coverage or to issue an alternative policy.
 - (+)(b) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
 - (-)(c) The association may reinsure any alternative or reissued policy.
- e- (4) Alternative policies adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The association may adopt alternative policies of various types of future issuance without regard to any particular impairment or insolvency.
- f- (5) Alternative policies must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.
- g- (6) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
- h- (7) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association

in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the ~~commissioner~~ or by a court of competent jurisdiction domiciliary insurance commissioner and the receivership court.

- i- (8) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the ~~policyholder~~ policyowner, the insured, or the association.
- 5- 3. When proceeding under ~~subdivision b of subsection 2 or subsection 3~~ with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subdivision c of subsection 3 of section 26.1-38.1-01.
- 6- 4. Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract of substitute coverage terminates the association's obligations under such policy or coverage under this chapter with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.
- 7- 5. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contractowners arising after the entry of such order.
- 8- 6. The protection provided by this chapter does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.
- 9- 7. In carrying out its duties under ~~subsections~~ subsection 2 and 3, the association may; ~~subject to approval by the court:~~
 - a. ~~Impose~~ Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest.
 - b. ~~Impose~~ Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral or cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in

conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

8. A deposit in this state, held according to law or as required by the commissioner for the benefits of creditors, including policyowners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, under section 26.1-06.1-50, must be paid promptly to the association. The association may retain a portion of any amount received equal to the percentage determined by dividing the aggregate amount of policyowners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policyowners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and retained pursuant to this subsection. Any amount paid to the association less the amount retained by it is treated as a distribution of estate assets pursuant to section 26.1-06.1-43 or similar provision of the state of domicile of the impaired or insolvent insurer.
- ~~40.~~ 9. If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in ~~subsections 2, 3, and 4~~ subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to ~~impaired or~~ insolvent insurers.
- ~~44.~~ 10. The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.
- ~~42.~~ 11. The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. Such standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a ~~third party~~ any person or property against whom the association may have rights through subrogation of the insurer's policyholders or otherwise.
- ~~43.~~ 12. Any person receiving benefits under this chapter must be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to,

the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and causes of action by any payee, policy or contractowner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.

44. 13. The subrogation rights of the association under this section have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.
45. 14. In addition to subsections ~~13~~ 12 and ~~14~~ 13, the association shall have all common-law rights of subrogation and other equitable or legal remedy ~~which that~~ which that would have been available to the impaired or insolvent insurer or ~~holder~~ owner, beneficiary, or payee of a policy or contract with respect to such policy or contract, including, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by succession responsible for the losses arising from or payment for the personal injury relating to the annuity.
15. If subsections 12, 13, and 14 are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion of the policies covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion of the policies covered by the association.
16. ~~The~~ In addition to any other rights and powers under this chapter, the association may:
- a. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;
 - b. Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 26.1-38.1-06 and to settle claims or potential claims against it;
 - c. Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
 - d. Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;

- e. Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims; ~~and~~
 - f. Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the power of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter;
 - g. Organize itself as a corporation or in other legal form permitted by the laws of this state;
 - h. Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person promptly shall comply with the request; and
 - i. Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.
17. The association may join an organization of one or more state associations of similar purposes, to further the purposes and administer the powers and duties of the association.
18. At any time within one year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer which accrue on or after this coverage date and which relate to contracts covered in whole or in part by the association under any indemnity reinsurance agreement entered by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer previously and expressly has disaffirmed the reinsurance agreement. The election is effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurers. If the association makes an election, subdivisions a through d apply with respect to the agreements selected by the association.
- a. The association is responsible for all unpaid premiums due under the agreements, for periods both before and after the coverage date, and is responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.
 - b. The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part, provided that, upon receipt of any of these amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of

20. Except as otherwise expressly provided in this section, this section does not alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. This section does not abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This section does not give a policyowner or beneficiary an independent claim for relief against an indemnity reinsurer which is not otherwise set forth in the indemnity reinsurance agreement.
21. The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.
22. If the association arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.
23. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

SECTION 5. AMENDMENT. Section 26.1-38.1-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-06. Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments must be due not less than thirty days after prior written notice to the member insurers and must accrue interest at eighteen percent per annum on and after the due date.
2. There must be two classes of assessment, as follows:
 - a. Class A assessments must be ~~made~~ authorized and called for the purpose of meeting administrative and legal costs and other expenses ~~and examinations conducted under the authority of section 26.1-38.1-09~~. Class A assessments may be ~~made~~ authorized and called whether or not related to a particular impaired or insolvent insurer.
 - b. Class B assessments must be ~~made~~ authorized and called to the extent necessary to carry out the powers and duties of the association with regard to an impaired or insolvent insurer.
3. The amount of any class A assessment must be determined by the board and may be ~~made~~ authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. ~~A~~ The total of all non-pro rata assessment assessments may not exceed one hundred fifty dollars per member insurer in any one calendar year.

4. The amount of any class B assessment must be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
5. Class B assessments against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became ~~impaired or insolvent~~ or, as in the case may be of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
6. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be ~~made~~ authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2 and computation of assessments under this ~~subsection~~ section must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty days after the assessment is authorized.
7. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral are removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.
8.
 - a. ~~The~~ Subject to subdivision b, the total of all assessments upon authorized by the association with respect to a member insurer for each subaccount of the life insurance and annuity account and for each subaccount thereunder may the health account may not in any one calendar year exceed two percent and for the health account may not in any one calendar year exceed two percent of such insurer's average of that member insurer's average annual premiums received in this state on the policies and contracts covered by the subaccount or account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds must be assessed as soon thereafter as permitted by this chapter.

under protest and must set forth a brief statement of the grounds for the protest.

- b. Within sixty days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
 - c. Within thirty days after a final decision was made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.
 - d. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.
 - e. If the protest or appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member insurer.
15. The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall comply promptly with a request.

SECTION 6. AMENDMENT. Subsection 5 of section 26.1-38.1-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision c of subsection 45 16 of section 26.1-38.1-05 and section 26.1-38.1-06, are delegated to a corporation, limited liability company, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, limited liability company, association, or organization must be reimbursed for any payments made on behalf of the association and must be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, limited liability company, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

SECTION 7. AMENDMENT. Subsection 3 of section 26.1-38.1-08 of the North Dakota Century Code is amended and reenacted as follows:

3. Any final action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the member's receipt of notice of the final action being appealed. ~~If a member company is appealing an assessment, the amount assessed must be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess must be returned to the member company.~~ Any final

action or order of the commissioner is subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state which apply to the action or orders of the commissioner.

SECTION 8. AMENDMENT. Section 26.1-38.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-09. Prevention of insolvencies.

1. To aid in the detection and prevention of insurer insolvencies or impairments, it is the duty of the commissioner:
 4. a. To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:
 - a. (1) Revokes its license;
 - b. (2) Suspends its license; or
 - e. (3) Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of ~~policyholders~~ policyowners or creditors.

(4) Such notice must be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs.
 2. b. To report to the board of directors when the commissioner has taken any of the actions set forth in ~~subsection 4~~ subdivision a or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.
 3. c. To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member ~~company~~ insurer that such ~~company~~ insurer may be an impaired or insolvent insurer.
 4. d. To furnish to the board of directors the national association of insurance commissioners insurance regulation information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein must be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.
5. 2. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member

insurers and companies seeking admission to transact insurance business in this state.

- ~~6.~~ 3. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations may not be considered public documents.
- ~~7.~~ 4. ~~It is the duty of the~~ The board of directors, upon majority vote, ~~to~~ may notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.
- ~~8.~~ The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination must be paid by the association and the examination report must be treated as are other examination reports. In no event may such examination report be released to the board of directors prior to its release to the public, but this does not preclude the commissioner from complying with subsection 4.
- ~~The commissioner shall notify the board of directors when the examination is completed. The request for an examination must be kept on file by the commissioner but it may not be open to public inspection prior to the release of the examination report to the public.~~
- ~~9.~~ 5. The board of directors ~~may,~~ upon majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.
- ~~10.~~ The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by such other associations.

SECTION 9. AMENDMENT. Section 26.1-38.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-10. Credits for assessments paid.

1. A member insurer may offset against its premium tax liability to this state an assessment described in ~~subsection 43~~ of section 26.1-38.1-06 to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business,

all uncredited assessments may be credited against its premiums tax liability for the year it ceases doing business.

2. Any sums which are acquired by refund, pursuant to ~~subsection 14 of~~ section 26.1-38.1-06, from the association by member insurers, and which have theretofore been offset against premium taxes as provided in subsection 1, must be paid by such insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

SECTION 10. AMENDMENT. Section 26.1-38.1-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-11. Miscellaneous provisions.

1. ~~Nothing in this~~ This chapter ~~may be construed to~~ does not reduce the liability for unpaid assessments of the insured of an impaired or insolvent insurer operating under a plan with assessment liability.
2. Records must be kept of all ~~negotiations and meetings in which the association or its representatives are involved~~ meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. Records of such negotiations or meetings may be made public only upon The records of the association with respect to an impaired or insolvent insurer may not be disclosed before the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 26.1-38.1-12.
3. For the purpose of carrying out its obligations under this chapter, the association must be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsections 12, 13, and 14, ~~and 15~~ of section 26.1-38.1-05. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue as covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.
4. As a creditor of the impaired or insolvent insurer as established in subsection 3 and consistent with chapter 26.1-06, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, does not apply to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association is entitled to apply

to the receivership court for approval of its own proposal to disburse these assets.

5. 5. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, any policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration must be given to the welfare of the ~~policyholders~~ policyowners of the continuing or successor insurer.
- ~~5.~~ 6. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 26.1-38.1-05 with respect to such insurer have been fully recovered by the association.
- ~~6.~~ 7. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under ~~such~~ the order has the right to recover on behalf of the insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections 7, 8, and 9.
- ~~7.~~ 8. No such distribution ~~shall be~~ is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
- ~~8.~~ 9. Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if ~~they~~ payment had been ~~paid~~ made immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.
- ~~9.~~ 10. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
- ~~10.~~ 11. If any person liable under subsection ~~7~~ 8 is insolvent, all its affiliates that controlled it at the time the distribution was paid, are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

SECTION 11. AMENDMENT. Section 26.1-38.1-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-12. Examination of the association - Annual report. The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one

hundred twenty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report.

SECTION 12. AMENDMENT. Section 26.1-38.1-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-38.1-16. Prohibited advertisement of Insurance Guaranty Association Act in insurance sales - Notice to ~~policyholders~~ policyowners.

1. No person, including an insurer, agent, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by ~~the North Dakota Life and Health Insurance Guaranty Association Act chapter 26.1-38.1.~~ chapter 26.1-38.1. Provided, however, that this section does not apply to the North Dakota life and health insurance guaranty association or any other entity ~~which~~ that does not sell or solicit insurance.
2. ~~Within one hundred eighty days after July 1, 1989~~ Before January 1, 1990, the association shall prepare a summary document describing the general purposes and current limitations of the chapter and complying with subsection 3. This document should be submitted to the commissioner for approval. Sixty days after receiving ~~such~~ approval, no insurer may deliver a policy or contract ~~described in subsection 2 of section 26.1-38.1-04~~ to a ~~policyholder or contractholder~~ policy or contractowners unless the summary document is delivered to the ~~policyholder or contractholder~~ policy or contractowner to or at the time of delivery of the policy or contract ~~except if subsection 4 applies.~~ The document should also be available upon request by a ~~policyholder~~ policyowner. The distribution, delivery, or contents or interpretation of this document does not mean that either the policy or contract or the ~~holder~~ owner thereof would be covered in the event of the impairment or insolvency of a member insurer. The document must be revised by the association as amendments to the chapter may require. Failure to receive this document does not give the ~~policyholder~~ policyowner, ~~contractholder~~ contractowner, certificate holder, or insured any greater rights than those stated in this chapter.
3. The document prepared under subsection 2 must contain a clear and conspicuous disclaimer on its face. The commissioner shall ~~adopt a rule establishing~~ establish the form and content of the disclaimer. The disclaimer must:
 - a. State the name and address of the life and health insurance guaranty association and insurance department;
 - b. Prominently warn the ~~policyholder~~ policyowner or ~~contractholder~~ contractowner that the North Dakota life and health guaranty

association may not cover the policy, or, if coverage is available, it will be subject to substantial limitations and exclusions and be conditioned on continued residence in this state;

- c. State the types of policies for which guaranty funds will provide coverage;
 - d. State that the insurer and its agents are prohibited by law from using the existence of the North Dakota life and health guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;
 - e. Emphasize that the ~~policyholder~~ policyowner or ~~contractholder~~ contractowner should not rely on coverage under the North Dakota life and health guaranty association when selecting an insurer; and
 - f. Explain rights available and procedures for filing a complaint to allege a violation of any provisions of this chapter; and
 - e. g. Provide other information as directed by the commissioner, including sources for information about the financial condition of insurers provided the information is not proprietary and is subject to disclosure under the state's public records law.
4. ~~No insurer or agent may deliver a policy or contract described in subsection 2 of section 26.1-38.1-01 and excluded under subdivision a of subsection 3 of section 26.1-38.1-01 from coverage under this chapter unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contractholder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the North Dakota life and health guaranty association. The commissioner shall by rule specify the form and content of the notice. A member insurer shall return evidence of compliance with subsection 2 for so long as the policy or contract for which the notice is given remains in effect.~~

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 272**HOUSE BILL NO. 1202**

(Representative Wald)

DOMESTIC VIOLENCE INSURANCE TREATMENT

AN ACT to create and enact a new section to chapter 26.1-39 of the North Dakota Century Code, relating to property and casualty insurance treatment of domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Domestic violence - Intentional acts. An insurer issuing or renewing a policy of property and casualty insurance in this state may not base any rating, underwriting, or claim handling decision solely on whether an applicant or insured suffers from domestic violence as defined under chapter 14-07.1. If a property and casualty insurance policy excludes property coverage for intentional acts, the insurer may not deny payment to an innocent coinsured who did not cooperate in or contribute to the creation of the loss if the loss arose out of domestic violence and the perpetrator of the loss is criminally prosecuted for the act causing the loss. Payment to this innocent coinsured may be limited to the innocent coinsured's ownership interest in the property as reduced by any payment to a mortgagor or other secured interest.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 273

SENATE BILL NO. 2376

(Senators Cook, Christmann)
(Representatives Grosz, Keiser)

NONECONOMIC LOSS FOR BODILY INJURY

AN ACT to create and enact a new section to chapter 26.1-41 of the North Dakota Century Code, relating to noneconomic loss for serious, accidental bodily injury; to provide for a report to the legislative council; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-41 of the North Dakota Century Code is created and enacted as follows:

Secured person exemption for no liability insurance. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person may not be assessed damages for noneconomic loss for a serious injury in favor of a party who has at least two convictions under section 39-08-20 and who was operating a motor vehicle owned by that party at the time of injury without a valid policy of liability insurance in order to respond to damages for liability arising out of the ownership, maintenance, or use of that motor vehicle.

SECTION 2. REPORT TO LEGISLATIVE COUNCIL. In 2002, the director of the department of transportation shall report to an interim committee designated by the legislative council regarding the effectiveness of section 1 of this Act in decreasing the incidents of driving without liability insurance.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 274**SENATE BILL NO. 2046**

(Legislative Council)
(Insurance and Health Care Committee)

**PARTNERSHIP FOR LONG-TERM CARE PROGRAM
REPEAL**

AN ACT to repeal chapter 26.1-45.1 of the North Dakota Century Code, relating to the partnership for long-term care program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 26.1-45.1 of the North Dakota Century Code is repealed.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 275**HOUSE BILL NO. 1104**

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

LOW-RISK INCENTIVE FUND LOAN PARTICIPATION

AN ACT to amend and reenact section 26.1-50-03 of the North Dakota Century Code, relating to Bank of North Dakota participation in loans made by the low-risk incentive fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-50-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-50-03. North Dakota low-risk incentive fund use. The fund may be used only for making loans to low-risk businesses for primary sector business projects in this state ~~and no.~~ A loan may not be approved or made by the fund without a ~~ten percent~~ some participation in the ~~aggregate amount of the loan by the Bank of North Dakota. The participation of the Bank of North Dakota in a loan may not exceed ten percent of the aggregate amount of the loan.~~ A loan from the fund may not be made to an insurer. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Fifty percent of the amount loaned from the fund during the first year of a biennium must be reserved solely for businesses in rural areas. The remainder loaned from the fund may be used in urban or rural areas. For purposes of this section, "rural areas" means the area of the state not including territory within the corporate limits of a city with a population of twenty thousand or more.

Approved March 16, 1999

Filed March 16, 1999

CHAPTER 276

HOUSE BILL NO. 1255

(Representatives Wald, Berg, Porter)
(Senators Klein, Mutch, Tallackson)

SELF-CRITICAL INSURANCE ANALYSIS PRIVILEGE

AN ACT to provide a self-critical insurance analysis privilege.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Commissioner" means the insurance commissioner.
2. "Insurance compliance audit" means a voluntary, internal evaluation, review, assessment, audit, or investigation for the purpose of identifying or preventing noncompliance with, or promoting compliance with, laws, regulations, orders, or industry or professional standards, which is conducted by or on behalf of an insurer licensed or regulated under title 26.1, or which involves an activity regulated under title 26.1.
3. "Insurance compliance self-critical analysis audit document" means a document prepared as a result of or in connection with an insurance compliance audit. An insurance compliance self-critical analysis audit document may include a written response to the findings of an insurance compliance audit. An insurance compliance self-critical analysis audit document may include, as applicable, field notes and records of observations, workpapers, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer-generated or electronically recorded information, phone records, maps, charts, graphs, and surveys, provided this supporting information is collected or developed for the primary purpose and in the course of an insurance compliance audit. An insurance compliance self-critical analysis audit document also includes:
 - a. An insurance compliance audit report prepared by an auditor, who may be an employee of the insurer or an independent contractor, which may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices;
 - b. Memoranda and documents analyzing portions or all of the insurance compliance audit report and discussing potential implementation issues;
 - c. An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or
 - d. Analytic data generated in the course of conducting the insurance compliance audit.

4. "Insurer" means an insurance company, nonprofit service corporation, or health maintenance organization organized under the laws of this state or a foreign insurance company, nonprofit service corporation, or health maintenance organization authorized to do business in this state.

SECTION 2. Self-critical analysis privilege created - Scope. An insurance compliance self-critical analysis privilege is created to protect the confidentiality of insurance compliance self-critical analysis documents or communications in regard to their content relating to voluntary internal compliance audits conducted by insurers and persons in regard to activities regulated under title 26.1, both to conduct voluntary internal audits of its compliance programs and management systems, and to assess and improve compliance with state and federal statutes, rules, and orders. The insurance compliance self-critical analysis privilege applies to all litigation or administrative proceedings pending on the effective date of this Act.

SECTION 3. Insurance compliance self-critical analysis document not discoverable or admissible. Except as provided in sections 5, 6, and 7 of this Act, an insurance compliance self-critical analysis audit document is privileged information and is not discoverable or admissible evidence in any legal action in any civil, criminal, or administrative proceeding. The privilege is a matter of substantive law of this state and is not merely a procedural matter governing administrative, civil, or criminal procedures in the courts of this state.

SECTION 4. Application of privilege. If an insurer, person, or entity performs or directs the performance of an insurance compliance audit, an officer, employee, or agent involved with the insurance compliance audit, or any consultant who is hired for the purpose of performing the insurance compliance audit, may not be examined in any civil, criminal, or administrative proceeding as to the insurance compliance audit or any insurance compliance self-critical analysis audit document. This section does not apply if it is determined under section 6 or 7 that the privilege does not apply.

SECTION 5. Submission to commissioner.

1. Upon request of the commissioner, an insurer must submit an insurance compliance self-critical analysis audit document to the commissioner, or the commissioner's designee, as a confidential document under the provisions of section 26.1-03-19.4 without waiving the privilege set forth in this Act to which the insurer would otherwise be entitled. However, the provisions of sections 26.1-03-19.3 and 26.1-03-19.4 permitting the commissioner to make confidential documents public and accessible to the national association of insurance commissioners does not apply to the insurance compliance self-critical analysis audit documents voluntarily submitted. To the extent the commissioner has the authority to compel the disclosure of an insurance compliance self-critical analysis audit document under other provisions of applicable law, any report furnished to the commissioner may not be provided to any other person or entity and must be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of an insurance compliance self-critical analysis audit document furnished as a result of a request of the commissioner, whether under a claim of authority to compel disclosure or not, is limited to determining whether any disclosed defects in an insurer's policies or procedures or inappropriate treatment of customers has been remedied or that an appropriate plan for their remedy is in place. The commissioner may not impose any type of administrative fine or penalty as to any area

addressed or matter covered in an insurance compliance self-critical analysis audit document furnished at the commissioner's request, except where there is clear and convincing evidence that the insurer failed to undertake reasonable corrective action, eliminate inappropriate treatment of customers, or failed to implement an appropriate plan to rectify any noncompliance with state and federal statutes, rules, and orders.

2. An insurer's insurance compliance self-critical analysis audit document submitted to the commissioner remains subject to all applicable statutory or common law privileges including the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion. An insurance compliance self-critical analysis audit document submitted to and in the possession of the commissioner remains the property of the insurer and is not subject to any disclosure or production under section 44-04-18.
3. Disclosure of an insurance compliance self-critical analysis audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, does not constitute a waiver of the privilege with respect to any other person or any other government agency.

SECTION 6. Waiver of privilege by insurer - Grounds for determination of privilege - Civil, administrative, or criminal proceedings.

1. The self-critical analysis privilege does not apply to the extent that it is expressly waived by the insurer that prepared or caused to be prepared the insurance compliance self-critical analysis audit document.
2. In a civil or administrative proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
 - a. The privilege is asserted for a fraudulent purpose; or
 - b. The material is not subject to the privilege.
3. In a criminal proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
 - a. The privilege is asserted for a fraudulent purpose;
 - b. The material is not subject to the privilege; or
 - c. The material contains evidence relevant to commission of a criminal offense, and all three of the following factors are present:
 - (1) The commissioner, state's attorney, or attorney general has a compelling need for the information;
 - (2) The information is not otherwise available; and
 - (3) The commissioner, state's attorney, or attorney general is unable to obtain the substantial equivalent of the information

by any other means without incurring unreasonable cost and delay.

SECTION 7. Determination of privilege - Procedure.

1. If a person seeks from an insurer communications involving an insurance compliance audit or any insurance compliance self-critical analysis audit document during the course of a pending civil or criminal proceeding, the insurer may assert the self-critical analysis privilege and provide the information set forth in subsection 6 during the course of those proceedings just as any other privilege is asserted in the courts of this state. If the court is required to make a determination as to the privilege, the court shall follow the procedure and conditions set forth in subsection 5.
2. If there is a pending administrative proceeding, or there is no pending civil or criminal proceeding, the commissioner, state's attorney, or attorney general may serve on an insurer a written request by certified mail for disclosure of an insurance compliance self-critical analysis audit document. Within thirty days after the commissioner, state's attorney, or attorney general serves on an insurer a written request by certified mail for disclosure of an insurance compliance self-critical analysis audit document, the insurer that prepared or caused the document to be prepared may file with the appropriate court a petition requesting an in-camera hearing on whether the insurance compliance self-critical analysis audit document or portions of the document are privileged under this Act or subject to disclosure. The court has jurisdiction over a petition filed by an insurer under this subsection requesting an in-camera hearing on whether the insurance compliance self-critical analysis document or portions of the document are privileged or subject to disclosure. Failure by the insurer to file a petition waives the privilege for only the specific request made.
3. An insurer asserting the insurance compliance self-critical analysis privilege in response to a request for disclosure under this section shall include in its request for an in-camera hearing all of the information set forth in subsection 6.
4. Upon the filing of a petition under this section, the court shall issue an order scheduling, within forty-five days after the filing of the petition, an in-camera hearing to determine whether the insurance compliance self-critical analysis audit document or portions of the document are privileged under this Act or subject to disclosure.
5. The court, after an in-camera review, may require disclosure of material for which the privilege is asserted if the court determines, based upon its in-camera review, that any one of the conditions set forth in subsection 2 of section 6 of this Act is applicable as to a civil or administrative proceeding or that any one of the conditions set forth in subsection 3 of section 6 of this Act is applicable as to a criminal proceeding. Upon making such determination, the court may only compel the disclosure of those portions of an insurance compliance self-critical analysis document relevant to issues in dispute in the underlying proceeding. A compelled disclosure may not be considered to be a public document or be deemed to be a waiver of the privilege for any other civil, criminal, or administrative proceeding. An insurer unsuccessfully opposing

disclosure may apply to the court for an appropriate order protecting the document from further disclosure.

6. An insurer asserting the insurance compliance self-critical analysis privilege in response to a request for disclosure under this section shall provide at the time of making and filing any objection to the disclosure all of the following information:
 - a. The date of the insurance compliance self-critical analysis audit document.
 - b. The identity of the entity conducting the audit;
 - c. The general nature of the activities covered by the insurance compliance audit; and
 - d. An identification of the portions of the insurance compliance self-critical analysis audit document for which the privilege is being asserted.

SECTION 8. Privilege - Burden of proof - Stipulation. An insurer asserting the insurance compliance self-critical analysis privilege set forth in this Act has the burden of demonstrating the applicability of the privilege. Once an insurer has established the applicability of the privilege, a party seeking disclosure has the burden of proving that the privilege is asserted for a fraudulent purpose. The commissioner, state's attorney, or attorney general seeking disclosure of the privilege has the burden of proving the elements set forth in subdivisions a and c of subsection 3 of section 6 of this Act.

The parties may at any time stipulate in proceedings under section 6 or 7 of this Act to entry of an order directing whether the specific information contained in an insurance compliance self-critical analysis audit document is or is not subject to the privilege provided under this Act. Any such stipulation may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable to any other proceeding.

SECTION 9. Nonapplication of privilege. The self-critical analysis privilege set forth in this Act does not extend to:

1. Documents, communications, data, reports, or other information expressly required to be collected, developed, maintained, or reported to a regulatory agency pursuant to title 26.1, or other federal or state law;
2. Information obtained by observation or monitoring by any regulatory agency; or
3. Information obtained from a source independent of the insurance compliance audit.

Approved March 29, 1999
Filed March 29, 1999

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 277

HOUSE BILL NO. 1076

(Judiciary Committee)

(At the request of the Supreme Court)

COURT OF APPEALS EXTENDED

AN ACT to amend and reenact section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws, section 6 of chapter 24 of the 1993 Session Laws, and section 1 of chapter 294 of the 1995 Session Laws, relating to extending the expiration date for legislation that created a temporary court of appeals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁸ **SECTION 1. AMENDMENT.** Section 15 of chapter 374 of the 1987 Session Laws, as amended by section 1 of chapter 379 of the 1989 Session Laws, section 6 of chapter 24 of the 1993 Session Laws, and section 1 of chapter 294 of the 1995 Session Laws, is amended and reenacted as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, ~~2000~~ 2004, and after that date is ineffective.

Approved March 8, 1999

Filed March 9, 1999

¹⁹⁸ Section 12.1-01-04 was also amended by section 1 of Senate Bill No. 2211, chapter 120.

CHAPTER 278

HOUSE BILL NO. 1275

(Representatives DeKrey, Delmore, Koppelman)
(Senators W. Stenehjem, Traynor)

CLERK OF COURT DUTIES, RESPONSIBILITIES, AND FUNDING

AN ACT to create and enact chapter 27-05.2 of the North Dakota Century Code, relating to state funding of clerk of district court services; to amend and reenact sections 6-02-05, 11-08-06, 11-08-11, 11-08-14, 11-09.1-04, 11-10-02, 11-10-06, 11-10-10, 11-10-11, 11-19-03, 11-19-16, 11-19-17, 11-19.1-08, 11-20-02, 11-22-01, 11-22-02, 11-22-05, 11-26-01, 11-26-03, 11-26-04, 14-03-09, 14-03-10, 14-03-11, 14-03-17, 14-03-19, 14-03-20, 14-03-21, 14-03-22, 14-03-24, subsection 3 of section 14-15-09, subsection 4 of section 20.1-13.1-08, subsections 4 and 5 of section 20.1-13.1-10, subsection 4 of section 20.1-15-08, subsections 6 and 7 of section 20.1-15-11, sections 23-02.1-06, 23-21.1-02.1, 23-21.1-02.2, 26.1-02-19, subsection 1 of section 26.1-06.1-12, subsection 1 of section 26.1-06.1-17, subsection 1 of section 26.1-06.1-24, subsection 3 of section 26.1-06.1-49, subsection 3 of section 26.1-06.1-50, sections 27-01-01.1, 27-08.1-03, 28-20.1-05, 30.1-11-01, 32-37-05, 35-18-04, 35-21-05, 37-01-34, 37-01-35, subsection 4 of section 39-06.2-10.6, subsection 4 of section 39-20-05, subsections 6 and 7 of section 39-20-07, subsections 4 and 5 of section 39-24.1-08, subsection 1 of section 40-01.1-04, section 40-05.1-05, subsection 1 of section 40-33.1-14, subsection 1 of section 40-61-16, sections 43-01-19, 43-23-16, 43-25-09, 43-49-09, 44-11-01, 46-04-05, 47-18-08, 51-05.1-06, subsection 4 of section 54-40.4-05, sections 57-22-16, and 57-22-32 of the North Dakota Century Code, relating to filing fees, filing requirements, and various functions performed by clerks of district court; to repeal sections 11-17-01, 11-17-02, 11-17-03, 11-17-04, 11-17-05, 11-17-06, 11-17-07, 11-17-08, 11-17-09, 11-17-10, and 11-17-11 of the North Dakota Century Code, relating to duties, responsibilities, and funding of clerks of district court; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-02-05 of the North Dakota Century Code is amended and reenacted as follows:

6-02-05. (Effective January 1, 2001) Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing. The organization certificate must be acknowledged before ~~the clerk of some court of record or~~ a notary public, and, together with the acknowledgment thereof, must be authenticated by the seal of ~~such court or~~ the notary. The same thereupon must be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application ~~to him~~ for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established. Such notice must contain a statement of a time when and place where the board will hear such application and must specify that any person objecting thereto may appear and show

cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to section 6-07-04.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

SECTION 2. AMENDMENT. Section 11-08-06 of the North Dakota Century Code is amended and reenacted as follows:

11-08-06. (Effective January 1, 2001) Officers in county adopting consolidated office form of government. In addition to the board of county commissioners provided for by this title, the officers in a county which has adopted the county consolidated office form of government are as follows:

1. One county auditor who shall be ex officio register of deeds and, unless the clerk of district court serving the county is an employee of the state judicial system, ex officio clerk of the district court.
2. One state's attorney.
3. One sheriff.
4. One county treasurer, unless the office with its attendant powers and duties is combined with and conferred upon the county auditor by the board of county commissioners but no added compensation may be paid the county auditor in said capacity.
5. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.
6. One coroner.

SECTION 3. AMENDMENT. Section 11-08-11 of the North Dakota Century Code is amended and reenacted as follows:

11-08-11. (Effective January 1, 2001) Powers and duties of county auditor. The county auditor, in addition to the duties and powers conferred by law on that officer, shall perform the duties and functions and exercise the powers conferred on the register of deeds and, subject to subsection 1 of section 11-08-06, the clerk of the district court. The auditor shall be the chief administrative officer of the county. The board of county commissioners may delegate to the county auditor such duties of an administrative or executive nature as are not specifically conferred by law upon other officers. Such delegated duties shall be exercised by the county auditor under the supervision of the board of county commissioners.

SECTION 4. AMENDMENT. Section 11-08-14 of the North Dakota Century Code is amended and reenacted as follows:

11-08-14. (Effective January 1, 2001) Deputies and employees - Appointment - Compensation - Terms. Subject to the approval of the board of county commissioners, the county auditor may appoint a deputy auditor, a deputy register of deeds, and, subject to subsection 1 of section 11-08-06, a deputy clerk of the district court. The compensation of any such deputy appointed pursuant to this section shall be fixed by the board of county commissioners. The same person may be appointed to serve as deputy in two or more offices. Subject to the approval of the board of county commissioners, the county auditor may employ such clerks, stenographers, and other county employees as may be required to perform the duties of the several offices under the auditor's direction. The compensation of the employees shall be fixed by the board of county commissioners. Any deputy or

employee shall serve at the pleasure of the county auditor and may be appointed or employed to serve on a part-time basis.

SECTION 5. AMENDMENT. Section 11-09.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-09.1-04. (Effective January 1, 2001) 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 register of district court deeds for the county, unless the board of county commissioners designates a different official; 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 6. AMENDMENT. Section 11-10-02 of the 1997 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 chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. One clerk of the district court, except as otherwise provided by this section.
4. One state's attorney.
5. One sheriff.
6. One county treasurer.
7. One coroner.
8. 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 register of deeds ~~shall perform the functions of the~~ also serves as ex officio clerk of the district court, 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. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election. ~~For a county that has properly initiated the option pursuant to section 11-17-11, and the office of the clerk of court is funded by the legislative assembly, the board of county commissioners may provide for the functions of the register of deeds, which may include functions of the clerk of district court and other functions as determined by the board of county commissioners. 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. 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, 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 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.~~

¹⁹⁹ **SECTION 7. AMENDMENT.** Section 11-10-02 of the North Dakota Century Code as amended in section 6 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-02. (Effective January 1, 2003) 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 chapter 11-10.2 or 11-10.3, must have the following officers:

1. One county auditor.
2. One register of deeds.
3. ~~One clerk of the district court, except as otherwise provided by this section.~~
4. One state's attorney.
5. 4. One sheriff.
6. 5. One county treasurer.
7. 6. One coroner.

¹⁹⁹ Section 11-10-02 was also amended by section 11 of Senate Bill No. 2390, chapter 98.

8. 7. 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 register of deeds also serves as ex officio clerk of the district court; ~~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. In a county having a population of more than six thousand, the offices of clerk of district court and register of deeds may be combined into an office of register of deeds if the board of county commissioners, following consultation with the supreme court, adopts a resolution combining the offices no less than thirty days before petitions for nominations to county offices may first be filed for the primary election.~~ 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, and state's attorney; ~~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.

SECTION 8. AMENDMENT. Section 11-10-06 of the North Dakota Century Code is amended and reenacted as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section

11-10-10. ~~The bond for the clerk of a district court which is state funded pursuant to section 11-17-11 must be set by the supreme court.~~

SECTION 9. AMENDMENT. Section 11-10-06 of the North Dakota Century Code as amended in section 8 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-06. (Effective January 1, 2003) Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, ~~clerk of the district court~~, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.
8. Repealed by S.L. 1989, ch. 137, § 10, effective January 1, 1993.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10.

²⁰⁰ **SECTION 10. AMENDMENT.** Section 11-10-10 of the North Dakota Century Code is amended and reenacted as follows:

11-10-10. Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, clerk of district court, and sheriff must be regulated by the population in the respective counties

²⁰⁰ Section 11-10-10 was also amended by section 1 of House Bill No. 1362, chapter 99.

according to the last preceding official federal census from and after the date when the official report of such census has been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum amount payable for that office when filled on a full-time basis in the future.

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Seventeen thousand dollars in counties having a population of less than eight thousand.
 - b. Seventeen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

~~The compensation for the clerk of a district court which is funded by the state pursuant to section 11-17-14 must be set by the supreme court as a part of the judicial branch personnel system.~~

3. Repealed by S.L. 1975, ch. 87, § 2.
4. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.
5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by

section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Nineteen thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. Twenty thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

²⁰¹ **SECTION 11. AMENDMENT.** Section 11-10-10 of the North Dakota Century Code as amended in section 10 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-10. (Effective January 1, 2003) Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, ~~clerk of district court~~, and sheriff must be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census has been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, must be at least the minimum

²⁰¹ Section 11-10-10 was also amended by section 1 of House Bill No. 1362, chapter 99, and section 10 of House Bill No. 1275, chapter 278.

amount payable for that office when filled on a full-time basis in the future.

2. The county treasurer, county superintendent of schools, register of deeds, county auditor, ~~and clerk of district court~~ each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Seventeen thousand dollars in counties having a population of less than eight thousand.
 - b. Seventeen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
3. Repealed by S.L. 1975, ch. 87, § 2.
4. The county superintendent of schools is entitled to receive for any trips necessarily made within the county in the performance of school district reorganization duties the same mileage received under section 11-10-15. The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official may not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.
5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of ten thousand dollars in counties with a population in excess of ten thousand and a maximum of nine thousand three hundred dollars in counties with a population of ten thousand or less. In addition, there must be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses must be at the same rate as provided by section 11-10-15, and must be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it must be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:

- a. Nineteen thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. Twenty thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive forty-five thousand dollars, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a full-time state's attorney.

SECTION 12. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is amended and reenacted as follows:

11-10-11. Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section. ~~The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 11-17-14 must be set by the supreme court.~~

SECTION 13. AMENDMENT. Section 11-10-11 of the North Dakota Century Code as amended in section 12 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-10-11. (Effective January 1, 2003) Appointment and salary of deputies and clerks. The salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, ex officio clerk of the district court, and state's attorney must be fixed by a resolution of the board of county commissioners. Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section may appoint as deputy any other officer mentioned in this section.

SECTION 14. AMENDMENT. Section 11-19-03 of the North Dakota Century Code is amended and reenacted as follows:

11-19-03. (Effective January 1, 2001) If inquest not held - Certificate filed. If the coroner does not deem it necessary to hold an inquest in a case brought to the coroner's attention, the coroner shall file a certificate setting forth all the facts in relation to the case with the clerk register of the district court deeds of the county within which the dead body is found a certificate setting forth all the facts in relation to the case, unless the board of county commissioners designates a different official.

SECTION 15. AMENDMENT. Section 11-19-16 of the North Dakota Century Code is amended and reenacted as follows:

11-19-16. (Effective January 1, 2001) Testimony at coroner's inquest to be reduced to writing - Records, where filed. The testimony of all witnesses examined before the coroner's jury shall be reduced to writing by the coroner or under the coroner's direction, and shall be subscribed by the witnesses, respectively. The coroner shall file the testimony, together with a record of all proceedings had before the coroner, in the office of the clerk register of the district court deeds of the county within which the inquest was held, unless the board of county commissioners designates a different official.

SECTION 16. AMENDMENT. Section 11-19-17 of the North Dakota Century Code is amended and reenacted as follows:

11-19-17. Clerk of district court to file (Effective January 1, 2001) Filing of coroner proceedings of coroner. The clerk register of the district court deeds, unless the board of county commissioners designates a different official, shall file, index, and enter in a book kept for that purpose, the proceedings of the coroner ~~in the same manner as proceedings in civil actions are entered.~~

SECTION 17. AMENDMENT. Section 11-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

11-19.1-08. (Effective January 1, 2001) Records of coroner's office. It is the duty of the coroner to keep a full and complete record and to fill in the cause of death upon the death certificate in all cases coming under the coroner's jurisdiction. All records must be kept in the office of the coroner, if the coroner maintains an office as coroner, and if the coroner maintains no separate office, then in the office of the clerk register of the district court deeds of the county, unless the board of county commissioners designates a different official, and must be properly indexed, stating the name, if known, of every deceased person, the place where the body was found, date of death, cause of death, and all other available information required by this chapter. The report of the coroner and the detailed findings of the autopsy, if one was performed, must be attached to the report of every case. The coroner shall promptly deliver or cause to be delivered to the state's attorney of the county in which a death occurred copies of all necessary records relating to every death in which the coroner or state's attorney determines further investigation advisable. The sheriff of the county, the police of the city, or the state highway patrolmen on duty in that county in which the death occurred may be requested to furnish more information or make further investigation by the coroner or the coroner's deputy. The state's attorney may obtain from the office of the coroner copies of records and other information necessary for further investigation. All records of the coroner shall become and remain the property of the county and are public records.

SECTION 18. AMENDMENT. Section 11-20-02 of the North Dakota Century Code is amended and reenacted as follows:

11-20-02. (Effective January 1, 2001) Deputies - Appointment - Removal. The county surveyor may appoint one or more deputies and may revoke any such appointment at pleasure. An appointment or revocation shall be in writing, signed by the surveyor, and filed with the clerk register of the district court deeds, unless the board of county commissioners designates a different official. Each deputy shall take the constitutional oath of office and may perform any duties imposed by law upon the county surveyor. The surveyor and the surveyor's sureties shall be

responsible for the faithful performance of the duties of the surveyor's office by any deputy.

SECTION 19. AMENDMENT. Section 11-22-01 of the North Dakota Century Code is amended and reenacted as follows:

11-22-01. (Effective January 1, 2001) Sheriff, clerk of court, public administrator may deposit funds entrusted to them with county treasurer. Any and all funds, other than fees and taxes, received by any sheriff, clerk of the district court who is not an employee of the state judicial system, or public administrator by virtue of the office may be paid over and delivered to the treasurer of the county. Upon the delivery of the money to the treasurer, the officer depositing the same shall be absolved from all liability for the safekeeping of the funds.

SECTION 20. AMENDMENT. Section 11-22-01 of the North Dakota Century Code as amended in section 19 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

11-22-01. (Effective January 1, 2001-2003) Sheriff, clerk of court, public administrator may deposit funds entrusted to them with county treasurer. Any and all funds, other than fees and taxes, received by any sheriff, ex officio clerk of the district court ~~who is not an employee of the state judicial system~~, or public administrator by virtue of the office may be paid over and delivered to the treasurer of the county. Upon the delivery of the money to the treasurer, the officer depositing the same shall be absolved from all liability for the safekeeping of the funds.

SECTION 21. AMENDMENT. Section 11-22-02 of the North Dakota Century Code is amended and reenacted as follows:

11-22-02. (Effective January 1, 2001) Treasurer's receipt - Special funds provided for deposits. The county treasurer shall deliver a receipt to the ~~sheriff, clerk of the district court, or public administrator~~ officer making a deposit under the provisions of this chapter and shall deliver a copy of each such receipt to the county auditor immediately. The treasurer shall place the sum deposited in a special fund provided for that purpose or in a separate special fund maintained for each county officer making such deposits. The treasurer shall be vested with the same rights, duties, and liabilities with respect to deposits made under this chapter as with respect to public funds in the treasurer's hands as county treasurer.

SECTION 22. AMENDMENT. Section 11-22-05 of the North Dakota Century Code is amended and reenacted as follows:

11-22-05. (Effective January 1, 2001) Neglect of duty - Liability. If the ~~sheriff, clerk of the district court, or public administrator~~ an officer identified in section 11-22-01 fails to deposit with the county treasurer money which the officer receives by virtue of the office or makes or delivers, or causes to be made or delivered, any order for the withdrawal of the deposit except to the person, firm, corporation, or limited liability company entitled to receive the same, that officer shall be liable upon that officer's bond to any person suffering loss thereby.

SECTION 23. AMENDMENT. Section 11-26-01 of the North Dakota Century Code is amended and reenacted as follows:

11-26-01. (Effective January 1, 2001) Debt adjustment board - Members - Appointment - Oath. The judges of the district courts of the several judicial districts of the state shall appoint, by joint action of the judges within each judicial district, a

debt adjustment board for each county within the district. The board shall consist of not less than three nor more than seven members who shall serve at the pleasure of the district judges of the district within which the county is located, and who, before entering upon the duties of their office, shall take and file with the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, the oath of office prescribed for civil officers.

SECTION 24. AMENDMENT. Section 11-26-03 of the North Dakota Century Code is amended and reenacted as follows:

11-26-03. Clerk of court to act as secretary (Effective January 1, 2001)
Secretary of board. The ~~clerk~~ register of the district court, personally or by a deputy designated by the clerk deeds, unless the board of county commissioners designates a different official, shall act as secretary of the debt adjustment board. The expenses incurred by the ~~clerk~~ register of deeds, or designated official, in sending out notices and performing other acts prescribed by this chapter shall be defrayed out of funds available for payment of expenses in official business ~~carried on as clerk of the district court.~~

²⁰² **SECTION 25. AMENDMENT.** Section 11-26-04 of the North Dakota Century Code is amended and reenacted as follows:

11-26-04. (Effective January 1, 2001) Meetings of board, when held - Fees. Whenever a debtor or creditor calls for assistance upon the debt adjustment board of the county within which the debtor resides and pays to the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, a filing fee as ~~prescribed in subdivision d of subsection 4 of section 11-17-04~~ of ten dollars, such clerk the register of deeds, or designated official, shall call a meeting of the debtor and the debtor's creditors with the board at the earliest possible date. The ~~clerk~~ register of deeds, or designated official, shall notify the members of the board and the debtor and creditors of the time and place of such meeting. If a debtor requesting a meeting makes and files an affidavit stating that the debtor is financially unable to pay the fee provided for in this section, the payment thereof shall be waived.

SECTION 26. AMENDMENT. Section 14-03-09 of the North Dakota Century Code is amended and reenacted as follows:

14-03-09. (Effective January 1, 2001) Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record;¹ municipal judges; ~~clerks; registers of district court,~~ deeds, unless the board of county commissioners designates a different official; ordained ministers of the gospel;² priests; ~~and;~~ ¹ clergy licensed by recognized denominations pursuant to chapter 10-33;² and by any person authorized by the rituals and practices of any religious persuasion.

SECTION 27. AMENDMENT. Section 14-03-10 of the North Dakota Century Code is amended and reenacted as follows:

14-03-10. (Effective January 1, 2001) Marriage may not be solemnized without license. A person may not solemnize any marriage until the parties to the

²⁰² Section 11-26-04 was also amended by section 2 of House Bill No. 1042, chapter 107.

marriage produce a license regularly issued not more than sixty days before the date of the marriage by:

1. A clerk register of district court deeds serving the county in which either of the contracting parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official;
2. A clerk register of district court deeds serving the county in which a parent of either of the parties resides or is temporarily domiciled, unless the board of county commissioners designates a different official; or
3. A clerk register of district court deeds serving the county in which the marriage is to be solemnized, unless the board of county commissioners designates a different official.

For the purpose of obtaining a marriage license, a member of the armed forces of the United States stationed within the state of North Dakota is deemed to reside in the county in which that person is stationed.

SECTION 28. AMENDMENT. Section 14-03-11 of the North Dakota Century Code is amended and reenacted as follows:

14-03-11. (Effective January 1, 2001) Who issues marriage license to clerk of district court official. When a clerk of district court an official authorized to issue a marriage license desires to have a license for the clerk's official's own marriage issued in the county of the clerk's official's residence, the clerk official may request another clerk of district court authorized official to act in the clerk's official's stead upon the application for the license. The other clerk of district court official has the power and authority to issue the license in the county of the residence of the clerk official seeking the license. The request must be in writing and must be filed, with the application and other related papers, and must be recorded in the marriage record. Upon the return of the license, the clerk of district court official serving the county in which it was issued may record it and note the record thereon notwithstanding the clerk official is one of the contracting parties named in the license.

SECTION 29. AMENDMENT. Section 14-03-17 of the North Dakota Century Code is amended and reenacted as follows:

14-03-17. (Effective January 1, 2001) Application for license.

1. When application is made to a clerk register of district court deeds, unless the board of county commissioners designates a different official, for a marriage license, the clerk register of deeds, or designated official, shall inquire of the applicant upon oath concerning the legality of the contemplated marriage. The clerk register of deeds, or designated official, may examine other witnesses upon oath. The facts concerning the legality of the marriage may be submitted to the clerk register of deeds, or designated official, by affidavit. The clerk register of deeds, or designated official, also shall require each applicant to submit the following facts upon blanks provided by the county, together with documentary evidence of age:
 - 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 clerk register of deeds, or designated official, a birth certificate

or other satisfactory evidence of age. If either applicant is under the age of eighteen years, the ~~clerk~~ register of deeds, or designated official, shall require the written consent ~~under oath~~ of:

- (1) Either parent of the minor applicant, if the parents are living together;
 - (2) The parent having the legal custody of the minor applicant, if the parents are not living together;
 - (3) The surviving parent, if one of the parents of the minor applicant is deceased; or
 - (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.
- b. An affidavit showing whether 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 divorce decree.
2. All affidavits must be subscribed and sworn to before a person authorized to administer oaths. The ~~clerk~~ register of deeds, or designated official, shall retain on file ~~in the clerk'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 is subject to the penalty provided in section 14-03-28.
 3. Each application for a marriage license must also contain a statement regarding surname options which is consistent with section 14-03-20.1.
 4. Each application for a marriage license must contain the social security number of each applicant.

SECTION 30. AMENDMENT. Section 14-03-19 of the North Dakota Century Code is amended and reenacted as follows:

14-03-19. (Effective January 1, 2001) License issued to all who comply with law. If a ~~clerk~~ register of district court deeds, unless the board of county commissioners designates a different official, is satisfied that there is no legal impediment to the marriage and that the applicants have complied with the provisions of this chapter, then the ~~clerk~~ register of deeds, or designated official, shall issue and sign a marriage license in duplicate and affix ~~the clerk's~~ an official seal to both the original and the duplicate.

²⁰³ **SECTION 31. AMENDMENT.** Section 14-03-20 of the North Dakota Century Code is amended and reenacted as follows:

²⁰³ Section 14-03-20 was also amended by section 6 of House Bill No. 1044, chapter 51.

14-03-20. (Effective January 1, 2001) 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, greetings:

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)

Clerk of District Court Register of Deeds/Designated Official

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.

SECTION 32. AMENDMENT. Section 14-03-21 of the North Dakota Century Code is amended and reenacted as follows:

14-03-21. License (Effective January 1, 2001) Return of license and certificate returned to clerk of district court - Duplicate delivered to persons married - Records kept - Penalty. When a person authorized by law solemnizes a marriage, that person shall fill out and sign the certificate following the license in duplicate, giving the person's official title, or if a minister of the gospel or priest, the ecclesiastical body with which the minister or priest is connected. The original copy of the certificate and license must be returned to the clerk of district court official who issued the license within five days after the date of the solemnization of the marriage and the duplicate copy must be immediately delivered to the persons married. The clerk official shall file the original copy in the clerk's office and retain it as part of the clerk's records an official record. Any person who willfully neglects to make such return within the time required is subject to the penalty provided in section 14-03-28.

SECTION 33. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is amended and reenacted as follows:

14-03-22. (Effective January 1, 2001) Marriage license fee - Supplemental fee - Fee for marriage ceremony - Duties of officers. For the issuance and filing of a marriage license, the clerk register of district court deeds, unless the board of county commissioners designates a different official, shall collect the sum of six dollars from the party applying for the license. The clerk register of deeds, or designated official, shall also collect from the applicant a supplemental fee of twenty-nine dollars for aid to victims of domestic violence through the domestic violence prevention fund in accordance with chapter 14-07.1. For performing a marriage ceremony during regular courthouse hours, the clerk register of deeds, or designated official, shall collect a fee of thirty dollars which is to be retained by the county. If the marriage ceremony is performed ~~by the clerk~~ at a time other than during regular courthouse hours, the clerk register of deeds, or designated official, may collect and retain a fee in an amount to be determined by the clerk register of deeds, or designated official. Except as provided in this section, all collected fees must be deposited monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The clerk register of deeds, or designated official, shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in the registrar's office for that purpose. The registrar shall index the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 34. AMENDMENT. Section 14-03-24 of the North Dakota Century Code is amended and reenacted as follows:

14-03-24. (Effective January 1, 2001) Certified record is evidence. The books of record of marriage licenses issued and certificates returned which are kept by a clerk register of district court deeds, unless the board of county commissioners designates a different official, serving any county, or certified copies of such entries certified by the clerk under the clerk's seal, and certified copies of the records of the registrar of vital statistics, must be received as evidence in all courts, and are prima facie evidence in all courts and places of the facts stated therein.

SECTION 35. AMENDMENT. Subsection 3 of section 14-15-09 of the North Dakota Century Code is amended and reenacted as follows:

3. Any person filing a petition shall pay to the clerk of court a filing fee as prescribed in subsection 1 of section ~~14-17-04~~ 27-05.2-03.

SECTION 36. AMENDMENT. Subsection 4 of section 20.1-13.1-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from 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 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 state toxicologist, or the clerk register of district court deeds, are regularly kept records of the director unless the board of county commissioners has designated a different official to maintain the certificate.

²⁰⁴ **SECTION 37. AMENDMENT.** Subsections 4 and 5 of section 20.1-13.1-10 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk register of the district court deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

SECTION 38. AMENDMENT. Subsection 4 of section 20.1-15-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents

²⁰⁴ Section 20.1-13.1-10 was also amended by section 2 of Senate Bill No. 2345, chapter 358.

without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from 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 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 state toxicologist, or the ~~clerk register of district court deeds~~, are regularly kept records of the director unless the board of county commissioners has designated a different official to maintain the certificate.

²⁰⁵ **SECTION 39. AMENDMENT.** Subsections 6 and 7 of section 20.1-15-11 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the ~~clerk register of the district court deeds~~ in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the ~~clerk register of the district court deeds~~, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²⁰⁵ Section 20.1-15-11 was also amended by section 5 of Senate Bill No. 2345, chapter 358.

SECTION 40. AMENDMENT. Section 23-02.1-06 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-06. (Effective January 1, 2001) Registration districts. Each county of this state constitutes a registration district for purposes of this chapter, and the ~~clerk register of each district court in this state deeds, unless the board of county commissioners designates a different official, is hereby~~ designated as a local registrar. The local registrar may appoint one or more deputy local registrars for each registration district.

SECTION 41. AMENDMENT. Section 23-21.1-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-21.1-02.1. (Effective January 1, 2001) License to operate a perpetual care cemetery - Fee. No organization may operate as a perpetual care cemetery unless licensed on forms provided by the state department of health and consolidated laboratories by the clerk register of court deeds of the county within which the cemetery is located ~~on forms provided by the state department of health, unless the board of county commissioners designates a different official.~~ The license must be renewed by or before July first of each year. Prior to issuance or renewal of a license, the ~~county clerk register of court deeds, or designated official,~~ shall determine if the applicant is in full compliance with the provisions of this chapter. When applying for a license renewal, the applicant shall report to the ~~county clerk register of court deeds, or designated official,~~ the number of spaces sold, the gross amount of receipts from the sale of spaces, and the amount of money transferred to the perpetual care trust fund during the organization's previous fiscal year. The license fee must be five dollars per year, except that any perpetual care cemetery which has sold less than ten spaces during the previous fiscal year may not be required to pay a license fee.

SECTION 42. AMENDMENT. Section 23-21.1-02.2 of the North Dakota Century Code is amended and reenacted as follows:

23-21.1-02.2. ~~When county clerk of court shall revoke or refuse to renew~~ (Effective January 1, 2001) Revocation or nonrenewal of license to operate a perpetual care cemetery. The ~~county clerk register of court deeds, or designated official,~~ shall revoke or refuse to renew a license to operate a perpetual care cemetery if such organization fails to comply with the provisions of this chapter. When the ~~county clerk register of court deeds, or designated official,~~ revokes or refuses to renew a license to operate a perpetual care cemetery, ~~he shall publish a notice of such the action must be published~~ in the official county newspaper of the county wherein the cemetery is located. When an organization's license to operate a perpetual care cemetery is not current or has been revoked, the organization shall cease to make sales or transfers of burial spaces.

²⁰⁶ **SECTION 43. AMENDMENT.** Section 26.1-02-19 of the North Dakota Century Code is amended and reenacted as follows:

²⁰⁶ Section 26.1-02-19 was also amended by section 3 of House Bill No. 1042, chapter 107.

26.1-02-19. (Effective January 1, 2001) Fees. Any person filing a foreign decree shall pay a filing fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 to the clerk of court. Fees for docketing, transcriptions, or other enforcement proceedings are as provided for decrees of the district court.

SECTION 44. AMENDMENT. Subsection 1 of section 26.1-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

1. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and successor commissioners in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the ~~clerk of the district court or~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

1. An order to liquidate the business of a domestic insurer must appoint the commissioner and successor commissioners in office as liquidator and must direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator must be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the ~~clerk of the district court and the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which its principal office or place of business is located or, in the case of real estate, with the register of deeds of the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 46. AMENDMENT. Subsection 1 of section 26.1-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

1. As soon as practicable after the liquidation order, but not later than one hundred twenty days thereafter, unless extended by order of the court, the liquidator shall prepare in duplicate a list of the insurer's assets. The list must be amended or supplemented from time to time as the liquidator may determine. One copy must be filed in the office of the ~~clerk register of the district court~~ deeds, unless the board of county commissioners designates a different official, and one copy must be retained for the liquidator's files. All amendments and supplements must be similarly filed.

SECTION 47. AMENDMENT. Subsection 3 of section 26.1-06.1-49 of the North Dakota Century Code is amended and reenacted as follows:

3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the ~~clerk of the district court or the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 48. AMENDMENT. Subsection 3 of section 26.1-06.1-50 of the North Dakota Century Code is amended and reenacted as follows:

3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the ~~clerk of the district court or the~~ register of deeds, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that register of deeds, or designated official.

SECTION 49. AMENDMENT. Section 27-01-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-01-01.1. Budgeting and financing of the supreme court and district courts.

The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget must be delivered to the director of the budget pursuant to section 54-44.1-13. The budget for the district courts must include all salary and expenses for the district courts, including the juvenile courts, and their employees ~~except the clerks of district courts and their deputies and employees, whose salaries and expenses must be paid by the counties unless the county has properly exercised its option pursuant to section 41-17-11~~. Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services that are state funded pursuant to section ~~41-17-11~~ 27-05.2-02. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until July 1, 1981, must continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. ~~Any equipment and furnishings in the control and custody of a clerk of district court on the date of the exercise of the county option pursuant to section 41-17-11, and any such property acquired from that date until the beginning of the next state biennium, must continue in the district court's custody and control until the state court administrator determines such items are no longer needed by the judicial system. Upon that determination custody and control of the property must revert back to the county.~~

²⁰⁷ **SECTION 50.** Chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

27-05.2-01. Statement of intent. It is the intent of the legislative assembly that adequate and proper judicial services, including clerk of district court services, be provided in each county in this state. It is also the intent of the legislative assembly that funding for clerk of district court services be provided by the state judicial system within the limits of legislative appropriations and in cooperation with the several boards of county commissioners of the various counties in this state.

27-05.2-02. State funding of clerk of district court services - Agreements to provide services - Transition schedule.

1. Except as provided in subsection 2, the supreme court, within the limits of legislative appropriations and pursuant to subsection 7, shall provide clerk of district court services in each county in the state. The supreme court may provide such services through clerks of district court, deputies, and assistants who are employees of the judicial system or through service agreements under subsection 6. The supreme court shall develop standards and procedures to ensure that adequate clerk of district court services are provided. "Clerk of district court services" means those duties and services, as provided by statute or rule of the supreme court, that directly serve the judicial system and the provision of effective and efficient judicial services to the public. Beginning January 1, 2003, the individual designated by a board of county commissioners to provide clerk of district court services under subsection 2 or 6 serves as ex officio clerk of district court. The salary and bond for the ex officio clerk of district court must be fixed by a resolution adopted by the board of county commissioners.
2. A county may elect to provide clerk of district court services at the county's own expense. The board of county commissioners shall forward to the supreme court a resolution indicating its election to provide services under this subsection. Such services must be provided in a manner consistent with standards and procedures established by the supreme court. If the county is unable to provide adequate clerk of district court services, the supreme court shall provide for those services in any manner it considers appropriate. If a county has entered into an agreement under subsection 6, the county may not provide clerk of district court services under this subsection until after the agreement has expired.
3. In a county in which the supreme court determines that at least two full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection

²⁰⁷ Section 27-05.2-02 was amended by section 1 of House Bill No. 1382, chapter 291. Section 27-05.2-04 was amended by section 51 of House Bill No. 1275, chapter 278. Section 27-05.2-07 was amended by section 52 of House Bill No. 1275, chapter 278.

applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any equipment, including technology related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. The bond for the clerk of district court must be set by the supreme court. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.

4. In a county in which the supreme court determines that one or more, but less than two, full-time employees are necessary to provide clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system in the manner described in subsection 3. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county may provide clerk of district court services at its own expenses under subsection 2 or the supreme court may provide funding for clerk of district court services in accordance with an agreement under subsection 6.
5. In a county in which the supreme court determines that less than one full-time employee is necessary to provide clerk of district court services, the supreme court may provide funding for such services in accordance with an agreement under subsection 6.
6. The supreme court may enter into an agreement with one or more boards of county commissioners to provide funding for the provision of clerk of district court services in a manner consistent with standards and procedures established by the supreme court. Funding for personnel under the agreement must be equal to the amount, based on county employee compensation levels, necessary for the number of full-time employees needed to provide clerk of district court services. Funding must be available under the agreement to defray the cost of technology related equipment considered necessary by the supreme court for the delivery of adequate clerk of district court services. After entering into an agreement under this subsection, a county may, under chapter 11-10.2 or 11-10.3, provide for the delivery of clerk of district court services in a manner consistent with the agreement. If a county fails to fulfill the terms of an agreement or is unable to provide clerk of district court services consistent with standards and procedures established by the supreme court, the supreme court shall provide for those services in any manner it considers appropriate.
7. a. State funding for the provision of clerk of district court services may be provided beginning January 1, 2001. Before April 1, 2000, each board of county commissioners shall notify the supreme court of its

election to provide clerk of district court services under subsection 2, of its consent to the elected clerk of court and designated staff becoming state employees under subsection 3 or 4, or of its election to enter into an agreement under subsection 6. If a board of county commissioners elects to enter into an agreement under subsection 6, the agreement must be executed before July 1, 2000. If an agreement is not executed before that date, the county must provide clerk of district court services at its own expense under subsection 2.

- b. Before April 1, 2002, and thereafter before April 1 of each succeeding even-numbered year, each board of county commissioners that has executed an agreement under subsection 6 or whose county is providing clerk of district court services under subsection 2 must notify the supreme court of its election to continue the existing arrangement or initiate a different option. If a board of county commissioners elects to enter into an agreement under subsection 6, the agreement must be executed before July 1 of the year the election is made. If an agreement is not executed before that date, the county must provide clerk of district court services at its own expense under subsection 2.

27-05.2-03. (Effective January 1, 2001) Fees to be charged by the clerk of the district court.

1. A clerk of the district court shall charge and collect the following fees in civil cases:
 - a. For filing a case for decision that is not a small claims action, eighty dollars.
 - (1) Fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the civil legal services fund. Any fees collected under this paragraph which exceed four hundred thousand dollars in any biennium must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (2) For the filing of a petition for dissolution of marriage, annulment, or separation from bed and board, fifty dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the displaced homemaker account created by section 14-06.1-14 and fifteen dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - (3) For all other filings, sixty-five dollars of this fee must be paid by the clerk of court to the state treasurer for deposit in the state general fund.
 - b. For filing an answer to a case that is not a small claims action, fifty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund in the state treasury.
 - c. For filing a small claims action in district court, ten dollars.

- d. For filing any matter authorized to be filed in the office of the clerk of court other than under subdivision a, b, or c, ten dollars.
 - e. For preparing, certifying, issuing, or transmitting any document, ten dollars; or a lesser fee as may be set by the state court administrator.
 - f. For filing a motion or an answer to a motion to modify an order for alimony, property division, child support, or child custody, thirty dollars. The clerk shall deposit this fee with the state treasurer for deposit in the general fund of the state treasury.
2. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the state or an agency thereof or from a political subdivision or agency thereof.

27-05.2-04. (Effective January 1, 2001) Clerk to keep record of fees - Monthly report to county auditor or state treasurer. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, and also at the close of the clerk's term of office for a clerk who has not become a state employee under subsection 3 or 4 of section 27-05.2-02, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04 for purposes of depositing any money not required to be deposited in the state general fund, a designated special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1

27-05.2-05. (Effective January 1, 2001) Decree or judgment of divorce, annulment, or paternity filed with registrar of vital statistics. The clerk of the district court in which any decree or judgment of divorce, annulment of marriage, or paternity has been entered shall within fifteen days of the filing thereof notify the state register of vital statistics of the entry of the decree or judgment of divorce, annulment of marriage, or paternity and shall furnish such information relating

thereto as the state registrar may require upon such forms as may be furnished by the state registrar.

27-05.2-06. Records maintenance and disposal. A clerk of district court shall maintain and dispose of court records in accordance with rules, policies, and procedures adopted by the supreme court.

27-05.2-07. (Effective January 1, 2001) Penalty for neglect of duty. If an elected clerk of the district court who has not become a state employee under subsection 3 or 4 of section 27-05.2-02 violates the clerk's oath of office or neglects or refuses to perform any of the duties of office and any person is injured or aggrieved by such violation or neglect, such person may institute legal proceedings upon the bond of the clerk and recover double the amount of damages actually sustained. For each such violation or neglect by the clerk, the county treasurer shall collect a forfeiture of not less than fifty dollars.

²⁰⁸ **SECTION 51. AMENDMENT.** Section 27-05.2-04 of the North Dakota Century Code as created in section 50 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

27-05.2-04. (Effective January 1, 2001-2003) Clerk to keep record of fees - Monthly report to county auditor or state treasurer. ~~The~~ A clerk of the district court providing clerk services in accordance with subsection 2 or 6 of section 27-05.2-02 shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, ~~and also at the close of the clerk's term of office for a clerk who has not become a state employee under subsection 3 or 4 of section 27-05.2-02,~~ the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04 for purposes of depositing any money not required to be deposited in the state general fund, a designated special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the

²⁰⁸ Section 27-05.2-04 was created by section 50 of House Bill No. 1275, chapter 278.

address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1.

²⁰⁹ **SECTION 52. AMENDMENT.** Section 27-05.2-07 of the North Dakota Century Code as created in section 50 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

27-05.2-07. (Effective January 1, 2001-2003) Penalty for neglect of duty. If an ~~elected~~ ex officio clerk of the district court ~~who has not become a state employee under subsection 3 or 4 of section 27-05.2-02~~ violates the clerk's oath of office or neglects or refuses to perform any of the duties of office and any person is injured or aggrieved by such violation or neglect, such person may institute legal proceedings upon the bond of the clerk and recover double the amount of damages actually sustained. For each such violation or neglect by the clerk, the county treasurer shall collect a forfeiture of not less than fifty dollars.

SECTION 53. AMENDMENT. Section 27-08.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-03. (Effective January 1, 2001) Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed five thousand dollars, which must be served upon the plaintiff by a person of legal age not a party to or interested in the action, or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule does not apply to counterclaims in excess of five thousand dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee as prescribed in subdivision c of subsection 1 of section ~~44-17-04~~ 27-05.2-03 must be charged for filing the claim affidavit.

²¹⁰ **SECTION 54. AMENDMENT.** Section 28-20.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-20.1-05. (Effective January 1, 2001) Fees. Any person filing a foreign judgment shall pay to the clerk of court a filing fee as prescribed in subdivision d of

²⁰⁹ Section 27-05.2-07 was created by section 50 of House Bill No. 1275, chapter 278.

²¹⁰ Section 28-20.1-05 was also amended by section 4 of House Bill No. 1042, chapter 107.

subsection 1 of section ~~44-17-04~~ 27-05.2-03. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court of any county of this state.

SECTION 55. AMENDMENT. Section 30.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-11-01. (Effective January 1, 2001) (2-515) Deposit of will with court in testator's lifetime. A will may be deposited by the testator or the testator's agent with ~~any court~~ a register of deeds for safekeeping; ~~under rules of the court~~. The will must be sealed and kept confidential. During the testator's lifetime, a deposited will must be delivered only to the testator or to a person authorized in a writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator's death, the ~~court~~ register of deeds shall notify any person designated to receive the will and deliver it to that person on request; or the ~~court~~ register of deeds may deliver the will to the appropriate court.

SECTION 56. AMENDMENT. Section 32-37-05 of the North Dakota Century Code is amended and reenacted as follows:

32-37-05. (Effective January 1, 2001) Fees paid by petitioner - Filing copy of judgment. The petitioner, upon the filing of the petition, must pay to the clerk of the district court a filing fee as prescribed in subsection 1 of section ~~44-17-04~~ 27-05.2-03. The cost of the publication of the notice required by this chapter shall be paid by the petitioner. In the event that said judgment shall establish the date and place of birth of the petitioner, the clerk of the court shall certify a copy of such judgment and file the same with the division of vital statistics, state department of health, Bismarck, North Dakota.

²¹¹ **SECTION 57. AMENDMENT.** Section 35-18-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-18-04. (Effective January 1, 2001) Clerk of court - Filing - Record - Fee. The clerk of the district court with whom the lien statement and proof of service are filed shall endorse on those filings the date and hour of filing and shall keep a record of all lien statements filed in the county, and of any orders, or responses relating to any orders, by the district court. The clerk shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. The clerk shall collect a fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 for filing and indexing each lien.

²¹² **SECTION 58. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

²¹¹ Section 35-18-04 was also amended by section 7 of House Bill No. 1042, chapter 107.

²¹² Section 35-21-05 was also amended by section 8 of House Bill No. 1042, chapter 107, and section 4 of Senate Bill No. 2229, chapter 315.

35-21-05. (Effective January 1, 2001) Fee - Recordation - Certified copies as evidence. If the presiding officer is the clerk of the district court, the clerk may charge a fee as prescribed in subdivision d of subsection 1 of section ~~44-17-04~~ 27-05.2-03 to be paid in advance by the applicant. If the officer is the clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a recording system provided for that purpose. If the officer is the register of deeds, the officer shall record the same in the book of miscellaneous records. The register of deeds may charge a fee as provided by section 11-18-05. Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters therein contained.

SECTION 59. AMENDMENT. Section 37-01-34 of the North Dakota Century Code is amended and reenacted as follows:

37-01-34. (Effective January 1, 2001) Recordation of discharge papers. ~~It is hereby provided that those~~ Those discharged from the national guard, the army, the marine corps, and other branches of the armed forces of the United States may record, without payment of any fee, their discharges from such armed forces, a certificate issued in lieu thereof, duly authenticated and certified copies thereof, or duly certified records of their service and discharge from such armed forces in the office of the ~~clerk register of the district court deeds~~ register of the county deeds of the county in which they reside; ~~without payment of any fee whatsoever, and such recordings have the same force and effect as the recording of other instruments; provided, however, that any,~~ unless the board of county commissioners designates a different official. Any discharge document recorded by the ~~clerk register of district court deeds, or designated official,~~ designated official, may be made available only to the following persons: the veteran, the parents, ~~his~~ the veteran's next of kin, the veteran's legal representative, a county veterans' service officer, a veterans' organization service officer, the department of veterans' affairs, or a designee of the veteran.

SECTION 60. AMENDMENT. Section 37-01-35 of the North Dakota Century Code is amended and reenacted as follows:

37-01-35. (Effective January 1, 2001) Legalizing previous recordings. Where ~~clerks a register of court have deeds, or designated official,~~ clerks a register of court have deeds, or designated official, has recorded discharge papers without charging the recording fees provided by law, ~~said the~~ the recording is ~~hereby~~ declared legalized. In no such case may ~~clerks the register of court deeds, or designated official,~~ clerks the register of court deeds, or designated official, be held responsible ~~to his respective county~~ in cases where filing fees have not been collected.

SECTION 61. AMENDMENT. Subsection 4 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

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, the following are deemed regularly kept records of the director: 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 register of district court,~~ or the clerk register of district court, ~~are regularly kept records of the director deeds, unless the board of county~~

commissioners has designated a different official to maintain the certificate.

²¹³ **SECTION 62. AMENDMENT.** Subsection 4 of section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from 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 state toxicologist relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the state toxicologist, or the ~~clerk register of district court,~~ are regularly kept records of the director deeds, unless the board of county commissioners has designated a different official to maintain the certificate.

²¹⁴ **SECTION 63. AMENDMENT.** Subsections 6 and 7 of section 39-20-07 of the North Dakota Century Code are amended and reenacted as follows:

6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the ~~clerk register of the district court~~ deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental

²¹³ Section 39-20-05 was also amended by section 7 of House Bill No. 1182, chapter 340.

²¹⁴ Section 39-20-07 was also amended by section 8 of Senate Bill No. 2345, chapter 358.

material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²¹⁵ **SECTION 64. AMENDMENT.** Subsections 4 and 5 of section 39-24.1-08 of the North Dakota Century Code are amended and reenacted as follows:

4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the clerk register of the district court deeds in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this subsection may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk register of the district court deeds, or designated official, must be admitted as prima facie evidence of the matters stated in the records.

²¹⁶ **SECTION 65. AMENDMENT.** Subsection 1 of section 40-01.1-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. With respect to a county:

²¹⁵ Section 39-24.1-08 was also amended by section 11 of Senate Bill No. 2345, chapter 358.

²¹⁶ Section 40-01.1-04 was also amended by section 9 of House Bill No. 1035, chapter 164, and section 4 of Senate Bill No. 2045, chapter 242.

- 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 chapter 54-40.3 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 chapter 11-10.2.
- 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 chapter 40-49.1, 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.~~

- ✎ Sharing of elective or appointive county officers with other counties, cities, or other political subdivisions pursuant to chapter 11-10.3.
- ✎ k. Initiation of the multicounty home rule charter process or the amendment or repeal of a multicounty home rule charter pursuant to section 11-09.1-04.1, 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.
- ✎ l. Initiation of the county-city home rule process or the amendment or repeal of a county-city home rule charter pursuant to chapter 54-40.4, 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.
- ✎ m. Transfer of a power or function of another political subdivision to the county pursuant to chapter 54-40.5.
- ✎ n. Creation of a county consolidation committee pursuant to chapter 11-05.1.
- ✎ o. That any other action be taken that is permitted by law.
- ✎ p. That no action be taken.

²¹⁷ **SECTION 66. AMENDMENT.** Section 40-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-05. (Effective January 1, 2001) Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter. If a majority of the qualified voters voting on the charter at the election shall vote in favor of the home rule charter it shall be deemed to be ratified and shall become the organic law of such city, and extend to all its local and city matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict therewith, and shall be liberally construed for such purposes. One copy of the charter so ratified and approved shall be filed with the secretary of state; one with the ~~clerk~~ register of district court deeds for the county in which the city is located, unless the board of county commissioners designates a different official; and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

SECTION 67. AMENDMENT. Subsection 1 of section 40-33.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. In the event that an authority shall default in the payment of principal of or interest on any issue of the notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority

²¹⁷ Section 40-05.1-05 was also amended by section 1 of Senate Bill No. 2198, chapter 363.

shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the notes, the holders of twenty-five percent in aggregate principal amount of the notes of such issue then outstanding, by instrument or instruments filed in the office of the ~~clerk register of the district court~~ deeds of the county in which the authority is located, unless the board of county commissioners designates a different official, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes for the purposes herein provided.

SECTION 68. AMENDMENT. Subsection 1 of section 40-61-16 of the North Dakota Century Code is amended and reenacted as follows:

1. In the event that an authority shall default in the payment of principal of or interest on any issue of the bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that an authority shall fail or refuse to comply with the provisions of this chapter, or shall default in any agreement made with the holders of any issue of the bonds, the holders of twenty-five percent in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the ~~clerk register of the district court~~ deeds of the county in which the authority is located, unless the board of county commissioners designates a different official, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

²¹⁸ **SECTION 69. AMENDMENT.** Section 43-01-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-01-19. (Effective January 1, 2001) County officers may certify abstracts.

The provisions of this chapter do not prevent the register of deeds, county treasurer, or clerk of court from certifying to abstracts of title to lands from the records of their respective offices. Each such officer, however, is liable on his official bond for the faithful performance of all acts performed by him as such abstracter. If the officer certifying the abstract is the clerk of court, the clerk shall charge and collect a fee as prescribed in subdivision e of subsection 1 of section ~~44-17-04~~ 27-05.2-03.

SECTION 70. AMENDMENT. Section 43-23-16 of the North Dakota Century Code is amended and reenacted as follows:

43-23-16. (Effective January 1, 2001) Licensee list. The secretary-treasurer shall publish, at least annually, a list of the names and addresses of all licensees licensed by the board under the provisions of this chapter, together with such other information relative to the enforcement of the provisions of this chapter as the board may deem of interest to the public. One of such lists must be mailed to the ~~clerk register of courts~~ deeds in each county ~~of the state~~, unless the board of county commissioners designates a different official, and must be held ~~by said clerk of court~~

²¹⁸ Section 43-01-19 was also amended by section 9 of House Bill No. 1042, chapter 107.

as a public record. Such lists must also be mailed by the secretary-treasurer to any person in this state upon request, and to all licensed brokers without charge.

SECTION 71. AMENDMENT. Section 43-25-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-09. (Effective January 1, 2001) License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice and must be recorded within thirty days after issuance in the office of the ~~clerk~~ register of the district court deeds in any county where the licensed massage therapist practices within thirty days after issuance, unless the board of county commissioners designates a different official. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. If the board reasonably believes a massage therapist is in a physical condition jeopardizing the health of those who seek relief from the massage therapist, the board may require the applicant to have a physical examination by a competent medical examiner. If the applicant has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the applicant furnishes due proof of being physically and mentally competent and sound. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee and production of a new certificate of physical examination. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 72. AMENDMENT. Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

43-49-09. (Effective January 1, 2001) License - Display - Renewal - Renewal fee. Each license must be conspicuously displayed at the place of practice. A license must be recorded within thirty days after issuance in the office of the ~~clerk~~ register of the district court deeds, unless the board of county commissioners designates a different official, 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 73. AMENDMENT. Section 44-11-01 of the North Dakota Century Code is amended and reenacted as follows:

44-11-01. (Effective January 1, 2001) What officers removable by governor - Grounds. The governor may remove from office any county commissioner, clerk of the district court who is not an employee of the state judicial system, sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city

commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 74. AMENDMENT. Section 44-11-01 of the North Dakota Century Code as amended in section 73 of this Act, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

44-11-01. (Effective January 1, 2001 2003) What officers removable by governor - Grounds. The governor may remove from office any county commissioner, ~~clerk of the district court who is not an employee of the state judicial system,~~ sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioner, surveyor, public administrator, city auditor, city commissioner, mayor, chief of police, deputy sheriff, or other police officer, township officer, rural fire protection district board member, school board member, or any custodian of public moneys, except the state treasurer, whenever it appears to the governor by competent evidence and after a hearing as provided in this chapter, that the officer has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office, or of habitual drunkenness or gross incompetency.

SECTION 75. AMENDMENT. Section 46-04-05 of the North Dakota Century Code is amended and reenacted as follows:

46-04-05. (Effective January 1, 2003) Distribution of session laws, compilations, and codifications to county officers. The board of county commissioners of each county, immediately after the publication of any session laws, codes, or compilations, shall cause a copy thereof to be furnished to the following county officers:

1. Auditor.
2. State's attorney.
3. ~~Clerk~~ Ex officio clerk of court, unless the clerk of court is an employee of the state judicial system.
4. Sheriff.

If any of the offices legally have been combined in the county, only one copy of the session laws, codes, or compilations need be furnished for the offices so combined. Provided, however, that such codifications and copies of the session laws remain the permanent property of the county.

SECTION 76. AMENDMENT. Section 47-18-08 of the North Dakota Century Code is amended and reenacted as follows:

47-18-08. (Effective January 1, 2001) Petition for appraisal - When filed. A petition for the appointment of appraisers of a homestead must be filed with the clerk register of the district court deeds, unless the board of county commissioners designates a different official, and a copy thereof, with notice of the time and place of hearing, served on the claimant at least ten days before the hearing.

SECTION 77. AMENDMENT. Section 51-05.1-06 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-06. (Effective January 1, 2001) License list. The public service commission shall compile annually, by April first, a list of the names and addresses of those licensed under this chapter. The list must be mailed to the clerk register of the district court deeds, unless the board of county commissioners designates a different official, in each county and must be held by the clerk of court as a public record. The commission shall mail the list to any person requesting it.

SECTION 78. AMENDMENT. Subsection 4 of section 54-40.4-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. One copy of the charter as ratified must be filed with the secretary of state, one with the clerk register of district court deeds, unless the board of county commissioners designates a different official, 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.

SECTION 79. AMENDMENT. Section 57-22-16 of the North Dakota Century Code is amended and reenacted as follows:

57-22-16. (Effective January 1, 2001) Procedure when personal property is about to be sold or removed without payment of tax. If a township, city, or county officer learns or believes that there is danger that personal property which has been assessed and upon which any personal property taxes are due or will be due, will be sold, or removed from the county, without payment of the taxes and without leaving sufficient property to pay the whole of such taxes, he shall report such fact to the sheriff, who forthwith shall collect the taxes, or distrain and sell sufficient property to pay the same, if they are not paid on demand, or require an undertaking from the owner in favor of the county treasurer, conditioned that all taxes levied upon such property will be paid when due. Such undertaking must be approved by the clerk register of the district court deeds, unless the board of county commissioners designates a different official. If the taxes involved have not been levied, they must be ascertained by the county auditor by applying the aggregate mill levy of the previous year for the taxing district in which the property is assessed to the current taxable valuation, and if, after the tax for the current year is levied, there is any excess, it must be refunded to the taxpayer on order of the board of county commissioners. In case a bond has been given, and the taxes are not paid when due, the county treasurer shall bring an action for the taxes and costs in the district court of the county, and the state's attorney shall represent the treasurer in such action on the bond.

²¹⁹ **SECTION 80. AMENDMENT.** Section 57-22-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-22-32. (Effective January 1, 2001) Collection from tax debtor who moves to another county - Duty of county auditor. Upon the removal of a delinquent tax

²¹⁹ Section 57-22-32 was also amended by section 10 of House Bill No. 1042, chapter 107.

debtor from the county, collection must be made from the debtor in the manner following:

1. In case of the removal of any delinquent tax debtor from the county in which the debtor's personal property was taxed to any other county in this state, it is the duty of the assessor immediately to make a proper effort to ascertain the place of the debtor's destination and to report the same to the county auditor. Thereupon, the county auditor shall make out and forward to the ~~clerk~~ register of the district court deeds of the county to which the tax debtor has removed, unless the board of county commissioners designates a different official of that county, a statement of the amount of such delinquent taxes, including penalties and costs that may have attached, specifying the value of property on which said taxes were levied.
2. On receipt of any such statement, the ~~clerk~~ register of the district court deeds, or designated official, receiving the same shall issue a warrant to the sheriff of the county, and such sheriff shall proceed immediately to collect the same in the manner in which the sheriff collects delinquent taxes in the county. The sheriff shall collect from the tax debtor an additional sum ~~as prescribed in subdivision e of subsection 4 of section 11-17-04 for each warrant of ten dollars~~. Such sum must be paid to ~~such clerk~~ the register of deeds, or designated official, as the fee for issuing said warrant, and all taxes thus collected must be remitted by the sheriff to the treasurer of the county to which the taxes belong, together with the original statement of account, and if any taxes remain unpaid a statement must be made of the reason therefor, and proper entries must be made on the tax lists of the county where the tax was levied.

SECTION 81. REPEAL. Sections 11-17-02, 11-17-03, 11-17-08, 11-17-09, 11-17-10, and 11-17-11 of the North Dakota Century Code are repealed.

SECTION 82. REPEAL. Sections 11-17-01, 11-17-05, and 11-17-06 of the North Dakota Century Code and sections 11-17-04 and 11-17-07 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 83. EFFECTIVE DATE. Sections 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 61, 62, 63, 64, 67, 68, 78, and 82 of this Act become effective January 1, 2001.

Approved April 2, 1999
Filed April 2, 1999

CHAPTER 279**SENATE BILL NO. 2078**

(Judiciary Committee)

(At the request of the Supreme Court)

JUROR SELECTION AFTER NATURAL DISASTER

AN ACT to amend and reenact section 27-09.1-05.1 of the North Dakota Century Code, relating to selection of jurors from a judicial district in the event of a natural disaster.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Section 27-09.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05.1. Selection of jurors from judicial district - Impact of natural disaster - Grounds and method for selection. The court, upon its own motion, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue. If a natural disaster impairs the selection of a sufficient number of prospective jurors in any county, the supreme court, by emergency order, may authorize the court in the affected county to obtain additional names and mailing addresses of prospective, qualified jurors from the clerk of court of an adjoining county in the judicial district or from the clerk of court of another county in the judicial district if a sufficient number of names and addresses is not available from the adjoining county.

Approved March 3, 1999
Filed March 4, 1999

²²⁰ Section 27-09.1-05.1 was also amended by section 1 of House Bill No. 1234, chapter 280.

CHAPTER 280**HOUSE BILL NO. 1234**
(Representative Klemin)**JUROR SELECTION**

AN ACT to amend and reenact section 27-09.1-05.1 of the North Dakota Century Code, relating to selection of jurors from a judicial district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Section 27-09.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-05.1. Selection of jurors from judicial district - Grounds and method for selection. The court, upon its own motion or in response to a motion by a party, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue.

Approved March 11, 1999
Filed March 11, 1999

²²¹ Section 27-09.1-05.1 was also amended by section 1 of Senate Bill No. 2078, chapter 279.

CHAPTER 281**SENATE BILL NO. 2080**

(Judiciary Committee)

(At the request of the Supreme Court)

SUPPORT ACTION CONTEMPT OF COURT

AN ACT to amend and reenact subdivision a of subsection 1 of section 27-10-01.3 of the North Dakota Century Code, relating to contempt of court in child or spousal support actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 27-10-01.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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. In a proceeding to impose a remedial sanction for failure to pay child or spousal support, an order to pay support is prima facie evidence the obligor has the ability to pay, and the burden of persuasion is upon the obligor to prove inability to pay the support ordered.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 282**SENATE BILL NO. 2171**

(Human Services Committee)

(At the request of the Department of Human Services)

**ADOPTION AND SAFE FAMILIES ACT
IMPLEMENTATION**

AN ACT to create and enact three new sections to chapter 27-20, two new subsections to section 50-09-01, five new subsections to section 50-09-02, two new subsections to 50-09-03, a new section to chapter 50-09, two new sections to chapter 50-11, two new chapters to title 50, and a new section to chapter 50-12 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997 and the interstate compact on adoption and medical assistance; to amend and reenact subsection 4 of section 14-15-11, subsection 2 of section 14-15.1-04, sections 27-20-02, 27-20-03, 27-20-30, 27-20-36, 27-20-38, 27-20-44, 27-20-45, 27-20-46, 27-20-47, 27-21-02.1, and 50-11-06.8 of the North Dakota Century Code, relating to implementing the Adoption and Safe Families Act of 1997; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²² **SECTION 1. AMENDMENT.** Subsection 4 of section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

4. The report of the investigation must contain an evaluation of the placement, including a criminal history record investigation of the petitioner, with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.

SECTION 2. AMENDMENT. Subsection 2 of section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. An assessment of how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.

SECTION 3. AMENDMENT. Section 27-20-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-02. Definitions. As used in this chapter:

1. "Abandon" means:

²²² Section 14-15-11 was also amended by section 1 of Senate Bill No. 2388, chapter 148.

- a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
 - (1) To communicate with the child; or
 - (2) To provide for the care and support of the child as required by law; or
 - b. As to a parent of a child in that parent's custody:
 - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
 - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:
- a. Abandons, tortures, chronically abuses, or sexually abuses a child;
 - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
 - (1) One year; or
 - (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;
 - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
 - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or
 - (3) A violation of section 12.1-17-02 in which the victim has suffered serious bodily injury;
 - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim; or

- f. Has been incarcerated under a sentence for which the latest release date is:
- (1) In the case of a child age nine or older, after the child's majority; or
 - (2) In the case of a child, after the child is twice the child's current age, measured in days.
4. "Child" means an individual who is:
- a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.
- ~~2.~~ 5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
- ~~3.~~ 6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~4~~ 16 and is not a traffic offense as defined in subsection ~~9~~ 15.
- ~~4.~~ 7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
- ~~5.~~ 8. "Deprived child" means a child who:
- a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent; or
 - e. Is in need of treatment and whose parents, guardian, or other custodian have refused to participate in treatment as ordered by the juvenile court.

9. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under section 23 of this Act, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
10. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
- ~~6.~~ 11. "Juvenile court" means the district court of this state.
12. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:
- a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
 - e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement continues to be appropriate and in the child's best interests; and
 - f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.
- ~~7.~~ 13. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.
14. "Relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
 - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;

- c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
 - d. The child's stepparent.
8. 15. "Shelter care" means temporary care of a child in physically unrestricted facilities.
9. 16. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
40. 17. "Unruly child" means a child who:
- a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
 - e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.
18. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 4. AMENDMENT. Section 27-20-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-03. Jurisdiction.

1. The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
 - a. Proceedings in which a child is alleged to be delinquent, unruly, or deprived;
 - b. Proceedings for the termination of parental rights except when a part of an adoption proceeding; and
 - c. Proceedings arising under sections 27-20-39 through 27-20-42.

2. The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this chapter:
 - a. Proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;
 - b. Proceedings under the interstate compact on juveniles;
 - c. Proceedings under the interstate compact on the placement of children; and
 - d. Proceedings arising under section 50-06-06.13 to obtain a judicial determination that the placement of a severely emotionally disturbed child in an out-of-home treatment program is in the best interests of the child.
3. The juvenile court has concurrent jurisdiction with the district court of proceedings for the appointment of a guardian for a minor which, if originated under this chapter, are governed by this chapter and chapter 30.1-27.

SECTION 5. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Reasonable efforts to prevent removal or to reunify - When required.

1. As used in this section, "reasonable efforts" means the exercise of due diligence, by the agency granted authority over the child under this chapter, to use appropriate and available services to meet the needs of the child and the child's family in order to prevent removal of the child from the child's family or, after removal, to use appropriate and available services to eliminate the need for removal and to reunite the child and the child's family. In determining reasonable efforts to be made with respect to a child under this section, and in making reasonable efforts, the child's health and safety must be the paramount concern.
2. Except as provided in subsection 4, reasonable efforts must be made to preserve and reunify families:
 - a. Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
 - b. To make it possible for a child to return safely to the child's home.
3. If the court or the child's custodian determined that continuation of reasonable efforts, as described in subsection 2, is inconsistent with the permanency plan for the child, reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected the child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.
5. Efforts to place a child for adoption, with a fit and willing relative or other appropriate individual as a legal guardian, or in another planned permanent living arrangement, may be made concurrently with reasonable efforts of the type described in subsection 2.
6. Removal of a child from the child's home for placement in foster care must be based on judicial findings stated in the court's order, and determined on a case-by-case basis in a manner that complies with the requirements of titles IV-B and IV-E of the Social Security Act [42 U.S.C. 620, et seq., and 42 U.S.C. 6701, et seq.], as amended, and federal regulations adopted thereunder, provided that this subsection may not provide a basis for overturning an otherwise valid court order.

SECTION 6. AMENDMENT. Section 27-20-30 of the North Dakota Century Code is amended and reenacted as follows:

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
 - a. Permit the child to remain with ~~his~~ the child's parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child.
 - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
 - (1) Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.
 - (2) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.
 - (3) The director of the county social service board or other public agency authorized by law to receive and provide care for the child.
 - (4) An individual in another state with or without supervision by an appropriate officer under section 27-20-40.
 - c. Without making any of the ~~foregoing~~ orders otherwise provided in this section transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section

- 27-20-39 if the child is or is about to become a resident of that state.
- d. Require the parents, guardian, or other custodian to participate in ~~the treatment ordered for the child.~~
 - e. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian.
 - f. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, establish, by order, some other planned permanent living arrangement.
2. Unless a child found to be deprived is found also to be delinquent, ~~he~~ the child may not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

SECTION 7. AMENDMENT. Section 27-20-36 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights or establishing a legal guardianship is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.
 - a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - a- (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - b- (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - e- (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that reasonable efforts of the type described in subsection 2 of section 5 of this Act are not required, or twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or

- (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
3. ~~An~~ Except as provided in subsection 2, an order of disposition pursuant to which a child is placed in foster care may not continue in force for more than ~~eighteen~~ twelve months after the child is considered to have entered foster care. Before the extension of any court order limited under this subsection, a permanency hearing must be conducted. Any other order of disposition may not continue in force for more than two years.
4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
- a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:
 - (1) All reasonable efforts have been made to reunite the child with the child's family;
 - (2) The deprivation is likely to continue;
 - (3) With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and
 - (4) The placement of the child in permanent foster care is in the best interests of the child.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination, the order may be made only after reasonable notice and opportunity to be heard have been given to the party.
6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.

7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is ~~removed from the care, custody, and control of the child's parent, guardian, or other custodian~~ placed in foster care without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

SECTION 8. AMENDMENT. Section 27-20-38 of the North Dakota Century Code is amended and reenacted as follows:

27-20-38. Rights and duties of legal custodian. A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child and the right to determine the nature of the care, placement, and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, except for any limits the court may impose. The custodian also has the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.

SECTION 9. AMENDMENT. Section 27-20-44 of the North Dakota Century Code is amended and reenacted as follows:

27-20-44. Termination of parental rights.

1. The court by order may terminate the parental rights of a parent with respect to ~~his~~ the parent's child if:
 - a. The parent has abandoned the child;
 - b. The child is a deprived child and the court finds ~~that the:~~
 - (1) The conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral, or emotional harm; ~~or~~
 - (2) The child has been in foster care, in the care, custody, and control of the department, or a county social service board, or, in cases arising out of an adjudication by the juvenile court that a child is an unruly child, the division of juvenile

services, for at least four hundred fifty out of the previous six hundred sixty nights; or

(3) A court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(a) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;

(b) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-06-03 in which the victim is a child of the parent; or

(c) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury; or

c. The written consent of the parent acknowledged before the court has been given.

2. If the court does not make an order of termination of parental rights, it may grant an order under section 27-20-30 if the court finds from clear and convincing evidence that the child is a deprived child.

SECTION 10. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Petition to terminate parental rights - When brought - Definitions.

1. A petition to terminate parental rights may be made as provided under this section and section 27-20-45.

2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:

a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;

b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or

c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:

(1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is another child of the parent;

- a. The court enters an order:
 - (1) Denying a petition to grant care, custody, and control of the child to the department or the division of juvenile services;
 - (2) Terminating an order that granted custody of the child to the department or the division of juvenile services; or
 - (3) Appointing a legal guardian under section 14 of this Act;
 - b. The court order under which the child entered foster care ends by operation of law;
 - c. The child is placed in a parental home by the court or a legal custodian other than the division of juvenile services and the legal custodian lacks authority to remove the child without further order of the court; or
 - d. The child is placed in a parental home by the division of juvenile services.
6. For purposes of subsection 2, a child is not in foster care on any night during which the child is:
- a. On a trial home visit;
 - b. Receiving services at the youth correctional center pursuant to an adjudication of delinquency; or
 - c. Absent without leave from the place in which the child was receiving foster care.
7. For purposes of this section:
- a. "A finding that the child has been subjected to child abuse or neglect" means:
 - (1) A finding of deprivation made under chapter 27-20; or
 - (2) A conviction of a person, responsible for a child's welfare, for conduct involving the child, under chapter 12.1-16 or sections 12.1-17-01 through 12.1-17-04 or 12.1-20-01 through 12.1-20-08.
 - b. "Compelling reason" means a recorded statement that reflects consideration of:
 - (1) The child's age;
 - (2) The portion of the child's life spent living in the household of a parent of the child;
 - (3) The availability of an adoptive home suitable to the child's needs;
 - (4) Whether the child has special needs; and

(5) The expressed wishes of a child age ten or older.

c. "Department" means the department of human services or its designee, including any county social service board.

SECTION 11. AMENDMENT. Section 27-20-45 of the North Dakota Century Code is amended and reenacted as follows:

27-20-45. Proceeding for termination of parental rights.

1. The petition must comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in the first sentence of section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry must include, to the extent necessary and appropriate, all of the following:
 - a. Whether any man is presumed to be the father of the child under the Uniform Parentage Act.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
 - d. Whether any person has formally or informally acknowledged or declared ~~his~~ that person's possible parentage of the child.
 - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.
5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled under section 27-20-26 to legal counsel during all stages of a proceeding to terminate the parent and child relationship ~~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. Prior to the termination proceeding held under this chapter, the court or a person designated by the court shall inform the parent of the right to counsel provided by this subsection.

6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

SECTION 12. AMENDMENT. Section 27-20-46 of the North Dakota Century Code is amended and reenacted as follows:

27-20-46. Effect of order terminating parental rights or appointing a legal guardian.

1. An order terminating parental rights of a parent terminates all ~~his~~ the parent's rights and obligations with respect to the child and of the child to or through ~~him~~ the parent arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has ~~he~~ the parent any right to object to the adoption or otherwise to participate in the proceedings.
2. An order appointing a legal guardian terminates any authority of a parent that is granted to the legal guardian under that order. A parent subject to such an order is entitled to treatment as a party at any subsequent juvenile court proceeding regarding the child.

SECTION 13. AMENDMENT. Section 27-20-47 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-47. ~~Commitment to agency~~ Disposition upon termination of parental rights.

1. If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall ~~commit~~:
 - a. Commit the child to the custody of the executive director of the department of human services or a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption or, in the absence thereof, in a foster home or take other suitable measures for the care and welfare of the child;
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian; or
 - c. Establish some other planned permanent living arrangement.

2. The custodian has the rights of a legal custodian and authority to consent to the child's adoption of the child, his marriage, his enlistment in the armed forces of the United States, and surgical and other medical treatment for the child.
- 2- 3. If the child is not ~~adopted~~ placed for adoption within ~~eighteen~~ twelve months after the date of the order and a ~~guardian or conservator of legal guardianship~~ or other planned permanent living arrangement for the child has not been ~~appointed by the district~~ established by a court of competent jurisdiction, the child must be returned to the court for entry of further orders for the care, custody, and control of the child.

SECTION 14. A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

Appointment of legal guardian.

1. In a proceeding under chapter 30.1-27, the court may:
 - a. Without terminating parental rights, appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the court has determined that a lawful basis exists for terminating parental rights, but the child is unlikely to be placed for adoption; or
 - b. Appoint a fit and willing relative or other appropriate individual as the child's legal guardian if the child has not been placed for adoption within twelve months after a termination of all parental rights.
2. An individual appointed as a legal guardian has:
 - a. If there is a parent with remaining parental rights, the rights of a legal custodian; and
 - b. If there is no parent with remaining parental rights, the rights of a legal custodian and the authority to consent to the child's adoption, marriage, enlistment in the armed forces of the United States, and surgical and other medical treatment.

SECTION 15. AMENDMENT. Section 27-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

27-21-02.1. Placement procedures. The division of juvenile services shall retain custody of the child as granted by the authority of the committing court and the Uniform Juvenile Court Act. The court in an order committing the child to the division may require court approval before a placement may be made to a more restrictive setting. All other placements may be made by the division at any time it appears to be in the child's best interest and in the best interest of the state.

1. A child, child's parent, or guardian who objects to a placement to a more restrictive setting made by the division may request a placement hearing to review the placement.
2. In an emergency, or for reasons of safety and security, the division may temporarily place a child in an appropriate facility. A child, child's

parent, or guardian who objects to the temporary placement may request a placement hearing to review the placement determined by the division.

3. The division may conduct a permanency hearing, as authorized by section 27-20-36, if an appropriate permanency plan may be carried out without exceeding the division's authority.

SECTION 16. Two new subsections to section 50-09-01 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

"Title IV-B" means title IV-B of the Social Security Act [Pub. L. 90-248, title II, sec. 240(c); 81 Stat. 911; 42 U.S.C. 620 et seq.], as amended;

"Title IV-E" means title IV-E of the Social Security Act [Pub. L. 96-272, title I, sec. 101(a)(1); 94 Stat. 501, 42 U.S.C. 670 et seq.], as amended.

SECTION 17. Five new subsections to section 50-09-02 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

For purposes of section 674(e)(2) of the Social Security Act [42 U.S.C. 674(e)(2)], approve families, outside of the jurisdiction of the state of North Dakota, for placement of children for adoption.

Act as the official agency of the state in the administration of child and family services in conformity with title IV-B and to direct and supervise county administration of that program.

Act as the official agency of the state in the administration of federal payments for foster care and adoption assistance in conformity with title IV-E and to direct and supervise county administration of that program.

Provide, upon request and insofar as staff resources permit, technical assistance concerning the requirements of title IV-B and title IV-E to courts within this state, including tribal courts, and to state's attorneys and tribal prosecutors within this state.

Make training available to state's attorneys and assistant state's attorneys who are willing to collaborate with colleagues in other counties on petitions to terminate parental rights.

SECTION 18. Two new subsections to section 50-09-03 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

Administer child and family services under the direction and supervision of the state agency in conformity with title IV-B.

Administer federal payments for foster care and adoption assistance under the direction and supervision of the state agency in conformity with title IV-E.

SECTION 19. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

State agency to submit plans and administer programs under title IV-B and title IV-E - Make application for federal funds.

1. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under title IV-B or title IV-E. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of title IV-B or title IV-E 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 may be authorized by federal law.
2. The state agency may apply for additional or conditionally available funds, such as adoption incentive payments, as may be made available under title IV-B or title IV-E, and may take any action reasonably necessary to support an application.

SECTION 20. AMENDMENT. Section 50-11-06.8 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-11-06.8. Criminal ~~background~~ history record investigation - Fingerprinting required.

1. Except as provided in ~~subsection 6~~ sections 21 and 22 of this Act, each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119, et seq.], as amended, federal law from:
 - a. Any individual employed by the facility; and
 - b. Any adult living in the facility, but not being provided care in the facility.
2. The facility shall assure that information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a license request, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon

receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in subdivisions a and b of subsection 1 if the request is made for purposes of this section.
6. ~~This section does not apply to a family foster care home for children.~~
7. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check.
8. 7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

SECTION 21. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation - Fingerprinting not required.

1.
 - a. Except as provided in section 22 of this Act, each facility providing foster care shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
 - b. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - (1) Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - (2) Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - (3) Is excused from providing fingerprints under rules adopted by the department.
2. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.
3. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
4. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.

5. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
6. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

SECTION 22. A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation - When not required. A criminal history record investigation may not be required, under section 50-11-06.8 or section 21 of this Act, of a family foster care home for children licensed or approved on the effective date of this section for so long as that home remains continuously licensed or approved.

SECTION 23. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation required.

1. Before appointment as a legal guardian under chapter 27-20, the individual must be subject to an assessment that includes the result of a criminal history record investigation made under this section.
2. Except as provided in subsection 6, an individual described in subsection 1 shall secure, from a law enforcement agency or other agency authorized to take fingerprints, two sets of fingerprints, and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law. Upon a request made under this section, a law enforcement agency shall take fingerprints of any individual described in subsection 1, and may charge a reasonable fee to offset the cost of fingerprinting.
3. An individual described in subsection 1 shall assure that information obtained under subsection 2 is provided to the department of human services.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department of human services. The bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.

6. Fingerprints need not be taken and a nationwide background check need not be made if an individual:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - c. Is excused from providing fingerprints under rules adopted by the department of human services.
7. The department of human services shall provide an individual, who provided the department with information under subsection 2, with any information received under this section from the bureau of criminal investigation which the department of human services is not prevented by federal law from disclosing to the individual.
8. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

Criminal history record investigation - Effect of results. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild, and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:

1. A felony conviction by a court of competent jurisdiction for criminal conduct involving:
 - a. Child abuse or neglect;
 - b. Domestic violence, as that term is used in chapter 14-07.1;
 - c. A crime in which a child was a victim, including the creation or distribution of child pornography; or
 - d. A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
2. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
 - a. A crime involving violence not described in subsection 1;
 - b. Any drug-related offense; or
 - c. An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in subsection 1;
3. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections, without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

4. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.

SECTION 24. A new section to chapter 50-12 of the North Dakota Century Code is created and enacted as follows:

Criminal history record investigation required.

1. A child-placing agency shall include, in any adoptive home study report, the results of a criminal history record investigation made under this section. If the results reveal a conviction of a crime described in section 23 of this Act, the home study report must include a determination that a home provided by the prospective adoptive parent is not a suitable home for the placement of any child and a recommendation that the petition for adoption be denied.
2. Except as provided in subsection 6, a child-placing agency shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints, and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any prospective adoptive parent. Upon a request of a child-placing agency, a law enforcement agency shall take fingerprints of any prospective adoptive parent for purposes of this section. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of fingerprinting.
3. The child-placing agency shall assure that information obtained under subsection 2 is provided to the department of human services and shall arrange payment to the bureau of criminal investigation sufficient to defray the cost of securing criminal history record information under this section.
4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
6. Fingerprints need not be taken and a nationwide background check need not be made if a prospective adoptive parent:
 - a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;

2. Adoption assistance and medical assistance to which this compact applies is that provided from the effective date of an adoption assistance agreement.
3. An adoption assistance agreement must be written, signed by the adoptive parents and on behalf of the state, and include:
 - a. A commitment that adoption assistance is payable without regard for the state of residence of the adoptive parents;
 - b. Provisions identifying the types of care and services toward which the adoption assistance state must make payments;
 - c. A commitment to make medical assistance available to the child in accordance with this chapter;
 - d. A declaration that the agreement is for the benefit of the child, the adoptive parents, and the state, and that it is enforceable by any of them; and
 - e. The date or dates upon which each payment or other benefit is to commence.
4. Any services or benefits provided for a child by this state as the residence state or the adoption assistance state may be facilitated by the department on behalf of another party state. Staff of the department shall assist staff of the child welfare agencies of other party states and the beneficiaries of adoption assistance agreements in assuring prompt and full access to all benefits included in such agreements.
5. Adoption assistance payments made by this state on behalf of a child living in another state must be made on the same basis and in the same amounts as they would be made if the child were living in this state, except that the laws of the adoption assistance program of the state in which the child lives may provide for the payment of higher amounts.

Medical assistance.

1. Except as provided in subsection 2:
 - a. A child, for whom this state has agreed under the terms of an adoption assistance agreement to provide medical assistance, is eligible for medical assistance in this state during the entire period for which the agreement is in effect and shall receive the same benefits as any other child who is covered by the medical assistance program in this state;
 - b. When a child, who is covered by an adoption assistance agreement under which this state is the adoption state, is living in another party state, payment for any medical services and benefits specified under the terms of the adoption assistance agreement, which are not available to the child under the medical assistance program of the residence state, must be made by this state as required by its law; and

- c. A child, for whom a party state has agreed under the terms of an adoption assistance agreement to provide medical assistance, is eligible for medical assistance in this state during the entire period this state is the child's residence state, and shall receive the same benefits as any other child who is covered by the medical assistance program in this state.
 2. Medical assistance may be subject to periodic reevaluation of eligibility, provided that:
 - a. No reevaluation may depend upon whether the adoptive parents are eligible for medical assistance; and
 - b. Financial eligibility is based solely upon the child's income and assets.

Compact administration.

1. The executive director of the department shall:
 - a. Execute one or more interstate compacts on behalf of this state, not inconsistent with this chapter, to implement the purposes of this chapter; and
 - b. Designate a compact administrator and a deputy compact administrator as the executive director deems necessary.
2. The compact administrator shall:
 - a. Coordinate all activities under this compact within this state;
 - b. Be the principal contact for officials and agencies within and without this state for the facilitation of interstate relations involving this compact and benefits and services provided under this compact; and
 - c. Assist child welfare agency staff from other party states and adoptive families receiving adoption and medical assistance on an interstate basis.
3. Acting with compact administrators from other party states, the compact administrator:
 - a. Shall develop uniform forms and administrative procedures for the interstate monitoring and delivery of adoption and medical assistance benefits and services pursuant to this compact; and
 - b. May enter into supplementary agreements, not inconsistent with the compact, with some or all party states, provided that no supplementary agreement may relieve a party state of any obligation to provide adoption and medical assistance in accordance with applicable state and federal law and this compact.

Joinder and withdrawal.

1. This state's joinder of the compact is effective upon execution of the compact by the executive director of the department.
2. The compact may be joined by any state.
3. This state may withdraw from the compact only by written notice sent to the appropriate officials of all other party states, but no such notice may take effect until one year after it is given.
4. All adoption assistance agreements outstanding and to which this state is a signatory at the time when its withdrawal from the compact takes effect must continue until they expire or are terminated in accordance with their provisions. Until such expiration or termination, all beneficiaries of the agreements involved shall continue to have all rights and obligations conferred or imposed by the compact, and this state shall continue to administer the compact to the extent necessary to fully implement those rights and obligations.

SECTION 26. LEGISLATIVE COUNCIL STUDY - IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT. The legislative council shall consider studying, during the 1999-2000 interim, the impact to the state department of human services, counties, court system, division of juvenile services, adoption agencies, and families of the Adoption and Safe Families Act of 1997 including related state and county staffing requirements, court costs, adoption-related costs and issues, foster care-related impacts, and the impacts on families.

Approved April 19, 1999

Filed April 19, 1999

CHAPTER 283

SENATE BILL NO. 2300

(Senators W. Stenehjem, Holmberg)
(Representatives DeKrey, Mahoney)

JUVENILE COURT HEARINGS AND RECORDS

AN ACT to amend and reenact subsection 5 of section 27-20-24 and subsection 6 of section 27-20-51 of the North Dakota Century Code, relating to juvenile court hearings and records; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 27-20-24 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Except in hearings~~ Hearings are open to the public if the purpose of the hearing is to declare a person in contempt of court, ~~the~~ or to consider a petition alleging an offense identified under subdivision b of subsection 1 of section 27-20-34 or subsection 2 of section 27-20-34. The general public must be excluded from other hearings under this chapter. ~~Only~~ In hearings from which the general public is excluded, only the parties, their counsel, witnesses, victims, and other persons accompanying a party for ~~his~~ that person's assistance, and any other persons as the court finds have a proper interest in the proceedings or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of ~~his~~ that child's delinquency or unruly conduct are being heard.

SECTION 2. AMENDMENT. Subsection 6 of section 27-20-51 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information ~~upon request~~ not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. ~~However, upon a third adjudication of delinquency involving an offense which if committed by an adult would constitute a felony and upon a second adjudication of delinquency involving an offense defined in section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-07, the name of the juvenile adjudicated delinquent may be disclosed~~ Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20-24.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on June 1, 1999.

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

Approved April 9, 1999
Filed April 9, 1999

JUDICIAL PROCEDURE, CIVIL

CHAPTER 284

SENATE BILL NO. 2287

(Senator W. Stenehjem)

(Representatives R. Kelsch, Mahoney, Wentz)

JUDGMENT AND SUPPORT PARTIAL PAYMENT

AN ACT to create and enact a new section to chapter 28-20 of the North Dakota Century Code, relating to application of a partial payment on a judgment; to amend and reenact subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to partial payments on child support arrears; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²³ **SECTION 1. AMENDMENT.** Subsection 6 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The Notwithstanding section 2 of this Act, the state disbursement unit shall disburse collected child support payments 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.]. Interest accrued on unpaid judgments for child support is child support. To the extent consistent with the requirements of title IV-D, payments received on judgments for child support must first be applied to accrued interest, and then to the principal.~~

SECTION 2. A new section to chapter 28-20 of the North Dakota Century Code is created and enacted as follows:

Application of partial payments on judgments. A partial payment made on a judgment must be applied first to post-judgment costs. If the payment exceeds the costs, the excess amount must be applied toward satisfying the interest due. If the payment exceeds the costs and interest, the excess amount must be applied toward discharging the judgment amount, and the subsequent interest is to be computed on the balance of the judgment amount remaining due. If the payment falls short of satisfying the costs and interest, interest continues to accrue on the former judgment amount until a payment is made that exceeds the sum of the costs and interest due at the time of payment, and then the excess amount must be applied toward discharging the judgment amount, and interest accrues thereafter on the balance of the judgment amount remaining due. This section does not apply to the collection of any debt owed to the state or a political subdivision.

²²³ Section 14-09-25 was also amended by section 10 of Senate Bill No. 2170, chapter 141.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies to each partial payment made on or after the effective date of this Act.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 285

SENATE BILL NO. 2241

(Senators Flakoll, Krebsbach, T. Mathern)
(Representatives Fairfield, Martinson, Wald)

EXEMPTIONS FROM PROCESS

AN ACT to amend and reenact subsection 3 of section 28-22-03.1 of the North Dakota Century Code, relating to the absolute exemption of Roth individual retirement accounts in process, levy, and sale proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 28-22-03.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Pensions, annuity policies or plans, and life insurance policies ~~which~~ that, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans 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], or section 408A of the Internal Revenue Code [Pub. L. 105-34; 111 Stat. 825; 26 U.S.C. 408A], 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

²²⁴ Section 28-22-03.1 was also amended by section 4 of House Bill No. 1238, chapter 260.

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 March 3, 1999
Filed March 4, 1999

CHAPTER 286

SENATE BILL NO. 2219

(Senators B. Stenehjem, Kinnoin, Thompson)
(Representatives Bernstein, Grande, Mickelson)

ADMINISTRATIVE RULES FILING

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to the filing of proposed administrative rules with the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁵ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written 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 notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules. 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 second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. 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 the first business day of 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

²²⁵ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2027, chapter 287, and section 1 of House Bill No. 1365, chapter 288.

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.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 287

SENATE BILL NO. 2027 (Legislative Council) (Administrative Rules Committee)

ADMINISTRATIVE RULEMAKING NOTICE PUBLICATION

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to publication of notice of administrative rulemaking; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written 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 agency's full notice must be filed with the office of the legislative council, and ~~published~~ the agency shall request publication of an abbreviated newspaper publication notice at least ~~twice~~ once in each daily newspaper of general circulation official county newspaper published in this state. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the address and telephone number to use to obtain a copy of the proposed rules or to submit written comments, and the location, date, and time of the public hearing on the rules. The agency shall mail a copy of the agency's full 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 agency's full 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

²²⁶ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2219, chapter 286, and section 1 of House Bill No. 1365, chapter 288.

of the date of the ~~second~~ publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the ~~second~~ publication, whichever is later. 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 the first business day of 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for administrative rulemaking notices filed with the office of the legislative council after July 31, 1999.

Approved April 14, 1999

Filed April 14, 1999

CHAPTER 288

HOUSE BILL NO. 1365

(Representatives Bernstein, Koppelman, Nelson)
(Senator B. Stenehjem)

SUPERINTENDENT OF PUBLIC INSTRUCTION RULEMAKING NOTICE

AN ACT to amend and reenact subsection 4 of section 28-32-02 of the North Dakota Century Code, relating to notice of rulemaking by the superintendent of public instruction; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁷ **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written 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 second publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the second publication, whichever is later. 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 the first business day of 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

²²⁷ Section 28-32-02 was also amended by section 1 of Senate Bill No. 2219, chapter 286, and section 1 of Senate Bill No. 2027, chapter 287.

concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least thirty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.

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

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 289

HOUSE BILL NO. 1025 (Legislative Council) (Administrative Rules Committee)

ADMINISTRATIVE RULES FROM FEDERAL GUIDELINES ADOPTION

AN ACT to amend and reenact sections 28-32-02.3, 28-32-02.4, and 40-08-06 of the North Dakota Century Code, relating to adoption of administrative rules from federal guidelines and adoption of rules by reference and appropriate circumstances and to the terms of office of city council members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-02.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-02.3. Repeal or waiver of certain ~~environmental~~ rules.

1. An agency shall repeal or amend any existing rule that was adopted from federal ~~environmental~~ guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the appropriate United States ~~environmental protection~~ agency when the ~~environmental protection~~ United States agency is evaluating current programs or delegating or modifying programs, to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

SECTION 2. AMENDMENT. Section 28-32-02.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-02.4. Permit and procedural rules adopted by reference in appropriate circumstances.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the appropriate United States ~~environmental protection~~ agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the ~~environmental protection~~ United States agency is delegating or modifying a program.

²²⁸ **SECTION 3. AMENDMENT.** Section 40-08-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-06. Term of office of council members - Staggered terms provided for in cities where other than ten council members elected. Council members shall hold office for four years and until their successors are elected and qualified. Terms of council members must be arranged so that ~~only~~ one-half of the council members in any city, as nearly as is practicable, are elected in any one election. When a city first adopts the council form of government or changes the number of council members, or when a city that has adopted the commission system of government returns to the city council form of government as provided by section 40-04-08, the alternation of the terms of the council members must be perfected as follows: of the council members elected in each ward, the one receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding the council member's election; if the city is not divided into wards, the one-half of the council members elected in the entire city receiving the greater number of votes shall serve until the fourth Tuesday in June following the second succeeding biennial election and the one-half of the council members elected in the entire city receiving the lesser number of votes shall serve until the fourth Tuesday in June following the biennial election succeeding their election. ~~Whenever, for any cause, more than one-half of the total number of council members in any ward, or more than one-half of the total number of council members in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the council members elected at the election must be determined as provided in this section.~~

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act are effective for rulemaking proceedings commenced after July 31, 1999.

Approved April 7, 1999
Filed April 8, 1999

²²⁸ Section 40-08-06 was also amended by section 4 of House Bill No. 1181, chapter 208.

CHAPTER 290

SENATE BILL NO. 2393

(Senator Lindaas)

AGENCY AND ATTORNEY EX PARTE COMMUNICATIONS

AN ACT to amend and reenact section 28-32-12.1 of the North Dakota Century Code, relating to ex parte communications between an agency head and the agency head's litigation attorney.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-12.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-12.1. Ex parte communications.

1. Except as provided in ~~subsection~~ subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. ~~Unless~~ Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters

commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.

- ~~5.~~ 5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection ~~5~~ 6.
- ~~5.~~ 6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
- ~~6.~~ 7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
- ~~7.~~ 8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
- ~~8.~~ 9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

Approved March 29, 1999
Filed March 29, 1999

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 291

HOUSE BILL NO. 1382

(Representative Hawken)

(Senator W. Stenehjem)

BAIL AS PROPERTY AND REFUNDS

AN ACT to create and enact a new section to chapter 29-08 of the North Dakota Century Code, relating to bail as the defendant's property; to amend and reenact subsections 3 and 4 of section 27-05.2-02 of the North Dakota Century Code as created by section 50 of House Bill No. 1275, as approved by the fifty-sixth legislative assembly, relating to options for state funding of clerk of district court services; and to amend and reenact section 29-22-31 of the North Dakota Century Code, relating to refund of bail money.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁹ **SECTION 1. AMENDMENT.** If House Bill No. 1275 becomes effective, subsections 3 and 4 of section 27-05.2-02 of the North Dakota Century Code, as created by section 50 of House Bill No. 1275, as approved by the fifty-sixth legislative assembly, are amended and reenacted as follows:

3. In a county in which the supreme court determines that at least ~~two~~ five full-time employees are necessary to provide adequate clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system if the board of county commissioners consents to the transition after consultation with the elected clerk. This subsection applies upon receipt by the supreme court of a resolution adopted by the board of county commissioners indicating its consent. Any equipment, including ~~technology related~~ technology-related equipment, and furnishings in the control and custody of the clerk of district court on the date the clerk becomes a state employee must remain in the control and custody of the clerk until the state court administrator determines the items are no longer needed. The clerk, upon becoming a state employee, shall receive a salary in an amount not less than the salary received as a county employee and shall remain an employee of the state judicial system until the clerk retires, resigns, or the term for which the clerk was initially elected expires, whichever occurs earlier. Thereafter, the clerk of district court must be appointed in the manner provided by supreme court rule. The bond for the clerk of district court must be set by the supreme court. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state

²²⁹ Section 27-05.2-02 was created by section 50 of House Bill No. 1275, chapter 278.

judicial system, the county must provide clerk of district court services at its own expense in accordance with subsection 2.

4. In a county in which the supreme court determines that one or more, but less than ~~two~~ five, full-time employees are necessary to provide clerk of district court services, the elected clerk of district court and clerk of court staff designated by the supreme court shall become employees of the state judicial system in the manner described in subsection 3. If the board of county commissioners does not consent to the clerk and designated staff becoming employees of the state judicial system, the county may provide clerk of district court services at its own expenses under subsection 2 or the supreme court may provide funding for clerk of district court services in accordance with an agreement under subsection 6.

SECTION 2. A new section to chapter 29-08 of the North Dakota Century Code is created and enacted as follows:

Bail - Defendant's property. Except as otherwise provided in this section, moneys deposited as bail are the property of the defendant, whether deposited by the defendant or by a third person on the defendant's behalf. If bail moneys are deposited by a third person, the person must be notified at the time of deposit that the moneys may be paid to the defendant upon final disposition of the case or applied to any fine, cost, or restitution imposed on the defendant. The person may direct, subject to further order of the judge, that the deposited moneys be released to that person upon final disposition of the case. When moneys are accepted by the court as bail, the judge shall order that the moneys received be deposited with the clerk of court. The clerk shall retain the moneys until the final order of the court disposing of the case. Upon release of the moneys held by the clerk, the moneys must be paid to the defendant or pursuant to the defendant's written direction or, unless otherwise ordered by the judge, as directed by a person who deposited moneys on behalf of the defendant. In the case of a conviction, the judge may order the moneys to be applied to any fine, cost, or restitution imposed on the defendant. The balance of the deposit, if any, must be paid to the defendant. Moneys deposited with the court or clerk of court as bail are exempt from garnishment, attachment, or execution.

SECTION 3. AMENDMENT. Section 29-22-31 of the North Dakota Century Code is amended and reenacted as follows:

29-22-31. Verdict of guilty - Procedure. If a general verdict is rendered against the defendant, or a special verdict is given, ~~he~~ the defendant must be remanded, if in custody, or, if ~~he~~ the defendant is at large on bail, ~~he~~ may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, ~~his~~ the defendant's bail is exonerated, or if money is deposited instead of bail, it must be refunded ~~to the defendant~~ in accordance with section 2 of this Act.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 292**HOUSE BILL NO. 1237**

(Representative Klemin)

JURY FORMATION

AN ACT to amend and reenact section 29-17-11 of the North Dakota Century Code, relating to forming a jury; and to repeal section 29-17-09 of the North Dakota Century Code, relating to completing a jury panel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-17-11 of the North Dakota Century Code is amended and reenacted as follows:

29-17-11. Drawing the jury. After a jury panel is completed ~~as is provided in section 29-17-09,~~ the clerk, under the direction of the court, shall draw publicly out of the box so many of the ballots, one after another, as are sufficient to form a jury.

SECTION 2. REPEAL. Section 29-17-09 of the North Dakota Century Code is repealed.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 293**SENATE BILL NO. 2189**

(Senator Cook)
(Representatives R. Kelsch, Porter)

SPEEDY TRIAL

AN ACT to amend and reenact section 29-19-02 of the North Dakota Century Code, relating to a speedy trial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-19-02 of the North Dakota Century Code is amended and reenacted as follows:

29-19-02. Right to speedy trial. In a criminal prosecution, the state and the defendant each shall have the right to a speedy trial. The right to a speedy trial in a criminal case in which the charging instrument contains a charge of a felony offense under section 19-03.1-23 or under chapter 12.1-20 is for the trial to begin within ninety days of the date the party elects this right. The prosecution and the defendant shall elect this right within fourteen days following the arraignment. The court may allow the trial to begin later than ninety days of the arraignment for good cause.

Approved April 8, 1999
Filed April 8, 1999

UNIFORM PROBATE CODE

CHAPTER 294

SENATE BILL NO. 2174

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM PROBATE CODE REVISIONS

AN ACT to amend and reenact sections 30.1-03-03, 30.1-09-08, subsection 3 of section 30.1-10-03, subsection 2 of section 30.1-10-04, subsection 2 of section 30.1-18-03, and subsection 1 of section 30.1-19-03 of the North Dakota Century Code, relating to the Uniform Probate Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-03-03. (1-403) Pleadings - When parties bound by others - Notice. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

1. Interests to be affected ~~shall~~ must be described in pleadings ~~which~~ that give reasonable information to owners by name or class, by reference to the instrument creating the interests; or in ~~other~~ another appropriate manner.
2. ~~Persons are~~ A person is bound by ~~orders~~ an order binding ~~others~~ another in the following cases:
 - a. ~~Orders~~ An order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, ~~bind other persons~~ binds another person to the extent ~~their~~ that person's interests, as objects, takers in default, or otherwise, are subject to the power.
 - b. To the extent there is no conflict of interest between them or among persons represented, ~~orders~~ an order binding a conservator ~~bind~~ binds the person whose estate the conservator controls; ~~orders~~ an order binding a guardian ~~bind~~ binds the ward if no conservator of the ward's estate has been appointed; ~~orders~~ an order binding a trustee ~~bind beneficiaries~~ binds a beneficiary of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a ~~prior~~ former fiduciary and in proceedings involving creditors or other third parties; ~~and orders~~ an order binding a personal representative ~~bind persons~~ binds a person interested in the undistributed assets of a decedent's estate in actions

or proceedings by or against the estate: ~~If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent that parent's minor child; and an order binding a sole holder or all coholders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.~~

- c. ~~An~~ Unless otherwise represented, a minor or an incapacitated, unborn, or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.
3. If no conservator or guardian has been appointed, a parent may represent a minor child.
 4. Notice is required as follows:
 - a. ~~Notice as~~ The notice prescribed by section 30.1-03-01 ~~shall~~ must be given to every interested person or to one who can bind an interested person as described in subdivision a or b of subsection 2. Notice may be given both to a person and to another who may bind that person.
 - b. Notice is given to unborn or unascertained persons who are not represented under subdivision a or b of subsection 2 by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.
4. 5. At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall ~~set out~~ state its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

SECTION 2. AMENDMENT. Section 30.1-09-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-09-08. (2-606) Nonademption of specific devises - Unpaid proceeds of sale, condemnation, or insurance - Sale by conservator.

1. A specific devisee has the right to ~~the~~ specifically devised property in the testator's estate at the testator's death and to:
 - a. Any balance of the purchase price, together with any security interest, ~~owing from~~ owed by a purchaser ~~to~~ at the testator at testator's death by reason of sale of the property by the testator.
 - 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. ~~Property~~ Any property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.
2. If specifically devised property is sold ~~or~~, mortgaged, or otherwise encumbered by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated ~~principal person~~, or if a condemnation award, insurance proceeds, or recovery for injury to the property ~~are~~ is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated ~~principal person~~, 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, the insurance proceeds, or the recovery. This subsection does not apply if, after the sale, ~~mortgage encumbrance~~, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by at least one year. The right of a specific devisee under this subsection is reduced by any right the devisee has under subsection 1.

SECTION 3. AMENDMENT. Subsection 3 of section 30.1-10-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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 equal tenancies in common.

SECTION 4. AMENDMENT. Subsection 2 of section 30.1-10-04 of the North Dakota Century Code is amended and reenacted as follows:

- 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 equal tenancies in common.

SECTION 5. AMENDMENT. Subsection 2 of section 30.1-18-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A personal representative ~~shall~~ may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will ~~is authority~~ authorizes a personal representative to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to authorize the personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. ~~Nothing in this~~ This section affects does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described ~~elsewhere~~ in this title.

SECTION 6. AMENDMENT. Subsection 1 of section 30.1-19-03 of the North Dakota Century Code is amended and reenacted as follows:

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state ~~and~~ or any political subdivision ~~thereof~~, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, ~~and~~ the heirs and devisees of the decedent, and nonprobate transferees unless presented as follows:
 - a. Within three months after the date of the first publication and mailing of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
 - b. Within three years after the decedent's death, if notice to creditors has not been published and mailed.

CHAPTER 295

HOUSE BILL NO. 1329

(Representatives Wald, Byerly, Meyer)
(Senators Kinnoin, Wardner, Watne)

ESTATE CLOSING AND ATTORNEY'S FEES

AN ACT to amend and reenact section 30.1-21-03.1 of the North Dakota Century Code, relating to closing an estate and attorney's fees; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-21-03.1 of the North Dakota Century Code is amended and reenacted as follows:

30.1-21-03.1. Estate closing - Procedures.

1. If the personal representative has not filed with the court a verified statement to close the estate, or as part of the supervised administration proceedings in accordance with this chapter, within three years from the date of death of the decedent, any devisee, heir, distributee, or claimant may petition the court, formally or by any informal request, or the court on its own motion may order, that the personal representative and the attorney employed by the personal representative be required to show cause to the court why the estate has not been closed; ~~and the~~. The court shall order the personal representative and the attorney employed by the personal representative to show cause to the court at a hearing scheduled within ninety days why the estate has not been closed; and. The court shall serve notice upon all heirs, devisees, claimants, distributees, and beneficiaries of the estate of such the order to show cause and, the date of the hearing, and invite such respondents of their right to participate in the hearing proceedings; after which the court shall issue its order establishing a timetable for the closing of the estate based upon the showing made at such proceeding. The court may award attorneys' fees and costs in favor of a petitioner if the court finds at such hearing that the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent.
2. Within twenty days of receipt of the order to show cause, the personal representative or the attorney employed by the personal representative shall provide the court with a report containing a timeframe for the anticipated closure of the estate; a detailed explanation as to why the estate has not been closed; and a detailed accounting of all disbursements made by the estate, including specific information as to all fees and other disbursements made to the personal representative, and to any attorney, auditor, investment advisor, or other specialized agent or assistant employed to do work for the estate.
3. After the order to show cause hearing, the court shall issue an order establishing a timetable for the closing of the estate based upon the information provided in the report and the evidence provided during the

hearing. The court may award attorney's fees and costs in favor of a petitioner if the court finds that the personal representative or the attorney employed by the personal representative has failed to show cause why the estate has not been closed within three years from the date of death of the decedent unless extended by the court. The court may file a complaint with the disciplinary board against the attorney.

SECTION 2. RETROACTIVE APPLICATION. This Act applies retroactively to an estate proceeding initiated before August 1, 1999.

Approved April 14, 1999

Filed April 15, 1999

CHAPTER 296

SENATE BILL NO. 2049

(Legislative Council)
(Judiciary Committee)

SAFE DEPOSIT BOX ENTRY

AN ACT to create and enact a new section to chapter 30.1-23 of the North Dakota Century Code, relating to the entry of a safe deposit box.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 30.1-23 of the North Dakota Century Code is created and enacted as follows:

Will searches, burial documents procurement, and inventory of contents.

1. Upon being furnished with satisfactory proof of death of a sole lessee or the last surviving co-lessee of a safe deposit box, the safe deposit company may open the box for an individual who appears in person and furnishes an affidavit stating the following:
 - a. The box may contain the will or deed to a burial lot or a document containing instructions for the burial of the lessee or that the box may contain property belonging to the estate of the lessee;
 - b. The individual is an interested person and wishes to open the box:
 - (1) To conduct a will search;
 - (2) To obtain a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements; or
 - (3) To make an inventory of the contents of the box; and
 - c. There has been no application for or appointment of a personal representative or administrator for the decedent's estate.
2. The safe deposit company may not open the box under this section if it has received a copy of letters from the representative of the deceased lessee's estate or other applicable court order.
3. The safe deposit company need not open the box if the lessee's key or combination is not available.
4. For purposes of this section, the term "interested person" means:
 - a. A person named as personal representative in a purported will of the lessee;
 - b. A person who immediately prior to the death of the lessee had the right of access to the box;

- c. The surviving spouse of the lessee;
 - d. A devisee of the lessee;
 - e. An heir of the lessee; or
 - f. A person designated by the lessee in a writing acceptable to the safe deposit company which is filed with the safe deposit company before death.
5. The safe deposit company need not ascertain the truth of any statement in the affidavit required to be furnished under this section, and when acting in reliance upon an affidavit, it is discharged as if it dealt with the personal representative of the lessee. The safe deposit company is not responsible for the adequacy of the description of any property included in an inventory of the contents of a safe deposit box, nor for conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the company or its employees, directors, officers, or agents. If the safe deposit company is not satisfied that the requirements of this section have been met, it may decline to open the box.
 6. No contents of a box other than a will and a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements may be removed pursuant to this section.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 297

SENATE BILL NO. 2327

(Senator W. Stenehjem)

GUARDIAN DECISIONMAKING AND COMPENSATION

AN ACT to create and enact a new subsection to section 30.1-28-03 and a new subsection to section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions and compensation for services in guardianship proceedings; and to amend and reenact subsection 2 of section 30.1-28-04 of the North Dakota Century Code, relating to authority of guardians to make health care decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 30.1-28-03 of the North Dakota Century Code is created and enacted as follows:

If the court approves a visitor, lawyer, physician, guardian, or temporary guardian appointed in a guardianship proceeding, that person may receive reasonable compensation from the ward's estate if the compensation will not unreasonably jeopardize the ward's well-being.

SECTION 2. AMENDMENT. Subsection 2 of section 30.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

2. At a hearing held under this chapter, the court shall:
 - a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
 - b. Hear evidence and determine whether there are any existing general durable powers of attorney and durable powers of attorney for health care. If there are validly executed durable powers of attorney, the court shall consider the appointed attorneys in fact and agents appointed thereunder when assessing alternative resource plans and the need for a guardian; and
 - c. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
 - (1) The proposed ward is an incapacitated person;
 - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
 - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and

- (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.

SECTION 3. A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

Unless a court of competent jurisdiction determines otherwise, a durable power of attorney for health care executed pursuant to chapter 23-06.5 takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.

Approved April 9, 1999
Filed April 9, 1999

JUDICIAL PROOF

CHAPTER 298

SENATE BILL NO. 2315

(Senators St. Aubyn, Heitkamp)
(Representatives Nottestad, Svedjan)

UNIFORM PRESERVATION OF PRIVATE BUSINESS RECORDS ACT

AN ACT to adopt the Uniform Preservation of Private Business Records Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Business" includes every kind of private business, profession, occupation, calling, or operation of a private institution, whether for profit or nonprofit.
2. "Record" or "business record" includes any book of account, voucher, document, canceled check, payroll, correspondence, record of sales, personnel, equipment production, report relating to any of these items, and any other business paper.
3. "Reproduction" means a reproduction or durable medium for making a reproduction obtained by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process that accurately reproduces or forms a durable medium for reproducing the original.

SECTION 2. Period of preservation. Unless a specific period is designated by law for preservation, any business record that state law requires a person to keep or preserve may be destroyed after the expiration of three years from the making of the record without constituting an offense under state law. This section does not apply to any minute book of any corporation or to any record of sales or other transactions involving a weapon, poison, or other dangerous article or substance capable of use in the commission of a crime.

SECTION 3. Preservation of reproductions. If in the course of regular business a person makes a reproduction of an original business record, the preservation of the reproduction constitutes compliance with any state law requiring that a business record be kept or preserved.

SECTION 4. Destruction of records by state officers. This Act does not diminish the authority of an officer of this state under existing law to permit the destruction of any business record.

Approved March 15, 1999
Filed March 16, 1999

JUDICIAL REMEDIES

CHAPTER 299

HOUSE BILL NO. 1303

(Representatives Drovdal, Kempenich)
(Senator Urlacher)

SOCIAL SECURITY NUMBER FRAUDULENT USE DAMAGES

AN ACT to create and enact a new section to chapter 32-03 of the North Dakota Century Code, relating to the recovery of damages for fraudulent use of social security numbers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Damages for fraudulent use of social security number - Attorney's fees.

1. No person may buy or otherwise obtain or sell, offer for for sale, take or give in exchange, pledge or give in pledge, or use any individual's social security account number, or any derivative of the number, for the purpose of committing fraud or fraudulently using or assuming the individual's identity.
2. Any individual aggrieved by the act of any person in violation of subsection 1 may bring a claim for relief to recover any equitable relief as the court determines to be appropriate and the greater of the actual damages or liquidated damages of up to ten thousand dollars.
3. In addition to any damages or other relief awarded under subsection 2, if the aggrieved individual prevails, the court may assess against the defendant reasonable attorney's fees and any other litigation costs and expenses, including expert fees, reasonably incurred by the aggrieved individual.
4. Any action brought under this section is in addition to any criminal prosecution that may be brought under any state or federal law.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 300

HOUSE BILL NO. 1242

(Representatives Porter, R. Kelsch, Severson)
(Senators Cook, Kilzer)

AUTOMATED EXTERNAL DEFIBRILLATOR REQUIREMENTS AND IMMUNITY

AN ACT to provide automated external defibrillator site requirements and civil liability immunity for the use of an automated external defibrillator.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Automated external defibrillators - Requirements.

1. Except for a medical services facility or prehospital emergency medical services provider, every person who acquires an automated external defibrillator shall:
 - a. Notify the department of health, upon acquisition of an automated external defibrillator, of the location of and the type of automated external defibrillator.
 - b. Require every individual expected to use the automated external defibrillator to receive American heart association or American red cross training in cardiopulmonary resuscitation and automated external defibrillator use or an equivalent nationally recognized course in cardiopulmonary resuscitation and automated external defibrillator use.
 - c. Maintain and test the automated external defibrillator according to the manufacturer's operational guidelines.
 - d. Establish an automated external defibrillator use protocol that provides any person who provides emergency care or treatment to an individual in cardiac arrest by using the automated external defibrillator shall contact as soon as possible an appropriate health care provider or emergency medical services provider.
 - e. Consider recommendations of a licensed physician in establishing the training, notification, and maintenance requirements of this subsection.
2. Any person who in good faith and without compensation provides emergency care or emergency treatment by using an automated external defibrillator is immune from civil liability for any personal injury resulting from the emergency care or emergency treatment and for any act or failure to act in providing or arranging further medical treatment if the person providing the emergency care or emergency treatment acted as an ordinary, reasonable, prudent person would act under the same or similar circumstances. This subsection does not apply if a personal injury results from the gross negligence or from the willful or wanton

misconduct of the person providing the emergency care or emergency treatment.

3. If the requirements of subsection 1 are met, the immunity provision of subsection 2 applies to a licensed physician under subdivision e of subsection 1, the person who provides the training under subdivision b of subsection 1, and the person responsible for the site on which the automated external defibrillator is located.
4. This section does not limit civil liability protection provided by any other law.

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 301

SENATE BILL NO. 2319

(Senators Lyson, Christmann, C. Nelson)

DUI EXEMPLARY DAMAGES

AN ACT to create and enact a new subsection to section 32-03.2-11 of the North Dakota Century Code, relating to exemplary damages for accidents involving motor vehicle operators under the influence of alcohol or a controlled substance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 32-03.2-11 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

In a civil action involving a motor vehicle accident resulting in bodily injury, it is sufficient for the trier of fact to consider an award of exemplary damages against the driver under the motion procedures provided in subsection 1 if clear and convincing evidence indicates that the accident was caused by a driver who, within the five years immediately preceding the accident has been convicted for violation of section 39-08-01 and who was operating or in physical control of a motor vehicle:

- a. With an alcohol concentration of at least ten one-hundredths of one percent by weight;
- b. Under the influence of a controlled substance unless a drug that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to the driver;
- c. Under the influence of alcohol and refused to take a test required under chapter 39-20; or
- d. Under the influence of a volatile chemical as listed in section 12.1-31-06.

At the trial in an action in which the trier of fact will consider an award of exemplary damages, evidence that the driver has been convicted of violating section 39-08-01 or an equivalent statute or ordinance is admissible into evidence.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 302

SENATE BILL NO. 2194

(Senators Wardner, Klein, Kringstad)
(Representatives Glassheim, Keiser, Nottestad)

GARNISHMENT

AN ACT to amend and reenact sections 32-09.1-07, 32-09.1-20, and 32-09.1-21 of the North Dakota Century Code, relating to garnishment of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁰ **SECTION 1. AMENDMENT.** Section 32-09.1-07 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-07. Form of summons and notice. The garnishee summons must state that the garnishee must serve upon the plaintiff or the plaintiff's attorney within twenty days after service of the garnishee summons a written disclosure, under oath, of indebtedness to the defendant and answers to all written interrogatories that are served with the garnishee summons. The plaintiff may not require disclosure of indebtedness or property of the defendant in the garnishee's possession or under the garnishee's control to the extent that the indebtedness or property exceeds one hundred ten percent of the amount of the judgment which remains unpaid. The garnishee summons must include the full name of the defendant and place of residence and the amount of the judgment which remains unpaid. The garnishee summons must also state that the garnishee must retain property or money in the garnishee's possession pursuant to this chapter until the plaintiff causes a writ of execution to be served upon the garnishee or until the defendant authorizes release to the plaintiff and must state that after the expiration of the period of time specified in section 32-09.1-20, the garnishee must release all retained property and money to the defendant and is discharged and relieved of all liability on the garnishee summons. The garnishee summons must state that no employer may discharge any employee because the employee's earnings are subject to garnishment. The garnishee summons must state that any assignment of wages made by the defendant or indebtedness to the garnishee incurred within ten days before the receipt of notice of the first garnishment on the underlying debt is void. The garnishee summons must state the date of the entry of judgment against the defendant. The garnishee summons must state that the defendant must provide to the garnishee within ten days after receipt of the garnishee summons a verified list of the dependent family members who reside with the defendant and their social security numbers, if any, to have the maximum amount subject to garnishment reduced under subsection 2 of section 32-09.1-03. The garnishee summons must state that failure of the defendant to provide a verified list to the garnishee within ten days after receipt of the garnishee summons is conclusive with respect to whether the defendant claims no family members.

²³⁰ Section 32-09.1-07 was also amended by section 17 of House Bill No. 1044, chapter 51.

The garnishee summons and notice to defendant must be substantially in the following form:

| | | |
|-----------------------|---|-----------------------|
| State of North Dakota |) | |
| |) | In _____ Court |
| County of _____ |) | _____ |
| _____ | | |
| Plaintiff | | |
| against | | Garnishee Summons and |
| _____ | | Notice to Defendant |
| Defendant | | |
| and | | |
| _____ | | |
| Garnishee | | |

The State of North Dakota to the above-named Garnishee:

You must serve upon the plaintiff or the plaintiff's attorney, within twenty days after service of this summons upon you, a written disclosure, under oath, setting forth the amount of any debt you may owe to the defendant, _____ (give full name and residence of defendant) and a description of any property, money, or effects owned by the defendant which are in your possession. Your disclosure need not exceed \$_____. (Enter 110 percent of the plaintiff's judgment which remains unpaid.) The date of entry of the judgment against the defendant was _____ (enter date of entry of plaintiff's judgment) and the amount of the judgment that remains unpaid is \$_____.

The defendant must provide you with a verified list of the names of dependent family members who reside with the defendant and their social security numbers if the defendant desires to have the garnishment amount reduced under subsection 2 of section 32-09.1-03. Failure of the defendant to provide the list to you is conclusive to establish that the defendant claims no dependent family members reside with the defendant.

Failure to disclose and withhold may make you liable to the plaintiff for the sum of \$_____. (Enter the lesser of the plaintiff's judgment against the defendant or 110 percent of the amount that remains unpaid.)

You must retain the defendant's nonexempt property, money, and effects in your possession until a writ of execution is served upon you, until the defendant authorizes release to the plaintiff, or until the expiration of ~~480~~ 270 days from the date of service of this summons upon you. If no writ of execution has been served upon you or no agreement has been made for payment within ~~480~~ 270 days, the garnishment ends and any property or funds held by you must be returned to the defendant if the defendant is otherwise entitled to their possession.

Any assignment of wages by the defendant or indebtedness to you incurred by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.

You may not discharge the defendant because the defendant's earnings are subject to garnishment.

Dated this _____ day of _____, 19____.

By: _____

NOTICE TO DEFENDANT

To: _____

The garnishee summons, garnishment disclosure form, and written interrogatories (strike out if not applicable), that are served upon you, were also served upon _____, the garnishee.

(Attorneys for Plaintiff)

(Address)

(Telephone)

SECTION 2. AMENDMENT. Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-20. Termination of garnishment. A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~one hundred eighty~~ two hundred seventy days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects ~~which that~~ that the garnishee has been retaining pursuant to the garnishment ~~shall must~~ must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

SECTION 3. AMENDMENT. Section 32-09.1-21 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-21. Continuing lien on wages. A plaintiff may obtain a ~~ninety-day~~ one hundred eighty-day continuing lien on wages by garnishment. ~~If a lien is to be obtained, the~~ A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons "continuing lien" and all. Each garnishment disclosure forms form must include the following:

~~Garnishee provide the garnishee will continue to hold the nonexempt portion of the defendant's earnings as they the earnings accrue through the last payroll period ending on or before ninety one hundred eighty days from the effective date of the garnishee summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.~~

~~At the time of the expected termination of the lien, the plaintiff shall mail to the~~ garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 303

HOUSE BILL NO. 1037

(Legislative Council)
(Information Technology Committee)

YEAR 2000 IMMUNITY

AN ACT to provide for year 2000 information requests; to create and enact a new section to chapter 32-12 of the North Dakota Century Code, relating to the liability of the state for a contract claim resulting from the failure of computers or computer equipment; and to amend and reenact subsection 3 of section 32-12.1-03 and subsection 3 of section 32-12.2-02 of the North Dakota Century Code, relating to the liability of political subdivisions and the state for a claim resulting from the failure of computers or computer equipment as a result of the year 2000 date change.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Year 2000 information requests - Use - Exceptions.

1. Any public entity may gather year 2000 processing information from any person which relates to computer hardware or software, telecommunications networks, or devices containing a computer processor. An information request under this section may specify the person to gather responses to the request. Any year 2000 processing response made to an information gathering request from a public entity is not a public record under section 44-04-18 or section 6 of article 11 of the Constitution of North Dakota and the response may not be directly or indirectly used, offered in evidence, or be subject to discovery in any civil action for damages in tort, contract, or for any other form of relief against the public entity or person.
2. This section does not preclude the public entity from using its requests for year 2000 information or responses to year 2000 information requests as evidence of a good-faith effort to determine year 2000 compliance of its computer hardware or software, telecommunications networks, or devices containing a computer processor.
3. For purposes of this section, year 2000 processing includes calculating, comparing, sequencing, displaying, or storing; transmitting; or receiving data from, into, and between the twentieth and twenty-first centuries, and during the years 1999 and 2000, and any leap year.
4. This section does not preclude any party from separately obtaining the information submitted in response to a year 2000 information request made under this section through other independent legal authority and using the separately obtained information in any action or proceeding.
5. This section does not apply to any information disclosed to the public with the express written consent of the party responding to a year 2000 information request under this section or disclosed by that party separately from a response to a year 2000 information request under this section.

6. This section applies to all responses to any year 2000 information requests received by a public entity whether the response was received before or after the effective date of this Act.

SECTION 2. A new section to chapter 32-12 of the North Dakota Century Code is created and enacted as follows:

Claims resulting from year 2000 date change computer failures prohibited.

The state is not liable for a claim arising upon contract which is the result of the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this section, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For the purposes of this section computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:

1. All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
2. The program logic accommodates same century and multicentury formulas and date values; and
3. The year 2000 or any other leap year is correctly treated as a leap year within all program logic.

SECTION 3. AMENDMENT. Subsection 3 of section 32-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A political subdivision is not liable for any claim based upon an act or omission of ~~an a political subdivision employee of a political subdivision,~~ exercising due care; in the execution of a valid or invalid statute or regulation; ~~whether or not such statute or regulation be valid,~~ or based upon the exercise or performance, exercising due care, or the failure to exercise or perform a discretionary function or duty on the part of a political subdivision or its employees, whether or not the discretion involved ~~be is~~ abused. Specifically, a political subdivision or ~~an a~~ political subdivision employee ~~thereof~~ is not liable for any claim that results from:
 - a. The decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, charter, ordinance, order, regulation, resolution, or resolve.

- b. The decision to undertake or the refusal to undertake any judicial or quasi-judicial act, including the decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
- c. The decision to perform or the refusal to exercise or perform a discretionary function or duty, whether or not such discretion ~~be~~ is abused and whether or not the statute, charter, ordinance, order, resolution, regulation, or resolve under which the discretionary function or duty is performed is valid or invalid.
- d. The failure to provide or maintain sufficient personnel, equipment, or other fire protection facilities; or doing any fire extinguishment or fire prevention work, rescue, resuscitation, or first aid; or any other official acts within the scope of official duties; provided, however, this ~~subsection~~ subdivision does not provide immunity for damages resulting from acts of gross negligence.
- e. The failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the political subdivision has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, a political subdivision is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the political subdivision has sought and received an assurance of compliance from the manufacturer or supplier, or if the political subdivision has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:
 - (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and multicentury formulas and date values; and
 - (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.

This subsection does not limit the liability of a political subdivision or an employee thereof for a personal injury arising out of the execution of

any legislative or quasi-legislative act, judicial or quasi-judicial act, or discretionary function.

SECTION 4. AMENDMENT. Subsection 3 of section 32-12.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Neither the state nor a state employee may be held liable under this chapter for any of the following claims:
 - a. A claim based upon an act or omission of a state employee exercising due care in the execution of a valid or invalid statute or rule.
 - b. A claim based upon a decision to exercise or perform or a failure to exercise or perform a discretionary function or duty on the part of the state or its employees, regardless of whether the discretion involved is abused or whether the statute, order, rule, or resolution under which the discretionary function or duty is performed is valid or invalid. Discretionary acts include acts, errors, or omissions in the design of any public project but do not include the drafting of plans and specifications that are provided to a contractor to construct a public project.
 - c. A claim resulting from the decision to undertake or the refusal to undertake any legislative or quasi-legislative act, including the decision to adopt or the refusal to adopt any statute, order, rule, or resolution.
 - d. A claim resulting from a decision to undertake or a refusal to undertake any judicial or quasi-judicial act, including a decision to grant, to grant with conditions, to refuse to grant, or to revoke any license, permit, order, or other administrative approval or denial.
 - e. A claim resulting from the assessment and collection of taxes.
 - f. A claim resulting from snow or ice conditions, water, or debris on a highway or on a public sidewalk that does not abut a state-owned building or parking lot, except when the condition is affirmatively caused by the negligent act of a state employee.
 - g. A claim resulting from any injury caused by a wild animal in its natural state.
 - h. A claim resulting from the condition of unimproved real property owned or leased by the state.
 - i. A claim resulting from the loss of benefits or compensation due under a program of public assistance.
 - j. A claim resulting from the reasonable care and treatment, or lack of care and treatment, of a person at a state institution where reasonable use of available appropriations has been made to provide care.

- k. A claim resulting from damage to the property of a patient or inmate of a state institution.
- l. A claim resulting from any injury to a resident or an inmate of a state institution if the injury is caused by another resident or inmate of that institution.
- m. A claim resulting from environmental contamination, except to the extent that federal environmental law permits the claim.
- n. A claim resulting from a natural disaster, an act of God, a military action, or an act or omission taken as part of a disaster relief effort.
- o. A claim for damage to property owned by the state.
- p. A claim for liability assumed under contract, except this exclusion does not apply to liability arising from a state employee's operation of a rental vehicle if the vehicle is rented for a period of thirty days or less and the loss is not covered by the state employee's personal insurance or by the vehicle rental company.
- q. A claim resulting from the failure of any computer hardware or software, telecommunications network, or device containing a computer processor to interpret, produce, calculate, generate, or account for a date that is compatible with the year 2000 date change if the state has made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change. For the purposes of this subdivision, the state is presumed to have made a good-faith effort to make the computer hardware or software, telecommunications network, or device containing a computer processor compliant with the year 2000 date change if the results of testing establish that the computer hardware or software, telecommunications network, or device containing a computer processor meets the compliance requirements of this section, or if the state has sought and received an assurance of compliance from the manufacturer or supplier, or if the state has sought an assurance of compliance from the manufacturer, supplier, government or other reliable source when testing or receiving an assurance from the manufacturer or supplier of the computer hardware or software, telecommunications network, or device containing a computer processor is not practicable. For purposes of this section, computer hardware or software, a telecommunications network, or device containing a computer processor is compliant with the year 2000 date change if:
 - (1) All stored dates or programs contain century recognition, including dates stored in data bases and hardware or internal system dates in devices;
 - (2) The program logic accommodates same century and multcentury formulas and date values; and

- (3) The year 2000 or any other leap year is correctly treated as a leap year within all program logic.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 304

SENATE BILL NO. 2110

(Transportation Committee)

(At the request of the Office of Management and Budget)

RISK MANAGEMENT MOTOR VEHICLE ACCIDENT REVIEW BOARD

AN ACT to create and enact a new section to chapter 32-12.2 of the North Dakota Century Code, relating to establishment of a risk management motor vehicle accident review board; and to amend and reenact subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to an exemption from the Administrative Agencies Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³¹ **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules made under section 2 of this Act, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the state building code as authorized or required under section 54-21.3-03, 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. A new section to chapter 32-12.2 of the North Dakota Century Code is created and enacted as follows:

Risk management motor vehicle accident review board - Powers - Records - Meetings. The director of the office of management and budget shall establish a risk management motor vehicle accident review board to review any accident involving a motor vehicle owned or leased by the state and operated by a state employee. The board is composed of the director of the department of transportation, or the director's designee, who shall serve as chairman of the board; the director of the office of management and budget, or the director's designee; the superintendent of the highway patrol or the superintendent's designee; and two state employees selected by the other board members to serve two-year terms.

The risk management motor vehicle accident review board shall review accidents involving state-owned or state-leased vehicles operated by state employees

²³¹ Section 28-32-01 was also amended by section 4 of Senate Bill No. 2121, chapter 207.

in order to improve traffic safety and driver training and to reduce the number of traffic accidents. The board shall adopt rules concerning receiving accident reports, holding meetings, receiving verbal or written information, making recommendations, communicating with state agencies and employees, and informing state agencies of its recommendations. Three members of the board constitute a quorum and an affirmative vote of at least three board members is required for the board to take action and make a recommendation.

The duties of the chairman include scheduling meetings; notifying participants; receiving and maintaining board records, reports, and other material; and communicating with agencies concerning the board's recommendations.

The department of transportation shall report state motor vehicle-related accidents to the board for review if it appears further training could have rendered the accident preventable or if there was a citation issued to the state employee operating the state-owned or state-leased motor vehicle. After review, the board may recommend driver training; defensive driver training; emergency vehicle operational training; physical, written, or operational examinations; or restrictions on the use of state-owned or state-leased motor vehicles. The state agency employing the employee operating the state-owned or state-leased motor vehicle involved in the traffic accident shall decide whether to implement the board's recommendation.

State employees must be paid and may not be required to take any leave for time needed to assist the board, and all state employers shall reimburse their employees for travel expenses incurred in assisting the board.

The board must be deemed to be a state agency loss-control committee under section 32-12.2-12 and all of the board's current or former members and all participants providing any verbal or written information to the board are entitled to the rights against production of records or testimony as contained in this section.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 305**SENATE BILL NO. 2409**

(Senators Traynor, Heitkamp)

PARTIES IN DECLARATORY ACTIONS

AN ACT to amend and reenact section 32-23-11 of the North Dakota Century Code, relating to parties in a declaratory action.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-23-11 of the North Dakota Century Code is amended and reenacted as follows:

32-23-11. Parties. When declaratory relief is sought, all persons who have or claim any interest ~~which~~ that would be affected by the declaration ~~shall~~ must be made parties, and ~~no~~ a declaration ~~shall~~ may not prejudice the rights of persons not parties to the proceeding. In any proceeding ~~which~~ that involves the validity of a municipal ordinance or franchise, ~~such~~ the municipality ~~shall~~ must be made a party, and ~~shall be~~ is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state ~~also shall~~ must be served with a copy of the proceeding and ~~shall be~~ is entitled to be heard. Any trade or professional association authorized to do, and doing, business in the state and whose members are licensed and regulated by state or federal agencies has standing to bring an action for declaratory judgment to determine any question of construction or validity of any statute, ordinance, resolution, rule, or regulation that threatens to injure its members.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 306

HOUSE BILL NO. 1067

(Representative Hoffner)

MINOR NAME CHANGES

AN ACT to amend and reenact section 32-28-02 of the North Dakota Century Code, relating to the name change of a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-28-02 of the North Dakota Century Code is amended and reenacted as follows:

32-28-02. Change of name of person - Petition.

1. Any person desiring to change ~~his or her~~ that person's name may file a petition in the district court of the county in which the person is a resident, setting forth:
 - ~~1.~~ a. That the petitioner has been a bona fide resident of the county for at least six months ~~prior to~~ before the filing of the petition.
 - ~~2.~~ b. The ~~cause~~ reason for which the change of the petitioner's name is sought.
 - ~~3.~~ c. The name ~~asked for~~ requested.
2. The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in ~~some newspaper printed in the district~~ the official newspaper of the county in which the petitioner resides, shall order a change of the name of the petitioner. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname.
3. If the person whose name is to be changed is a minor, the court shall consider the appointment of a guardian ad litem, and notice of the intended application must be published in the official newspaper of the county in which the minor resides and, if different, the official newspaper of the county in which each of the minor's parents reside. If the minor has a noncustodial parent, a copy of the notice must be deposited in a post office in this state, postage prepaid, not later than ten days after the publication of the notice, and directed to the noncustodial parent's last reasonably ascertained post office address. An affidavit of mailing of the notice prepared in accordance with the North Dakota Rules of Civil Procedure must be filed with court.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 307

SENATE BILL NO. 2303 (Senators Klein, D. Mathern) (Representative Berg)

FINANCIAL INSTITUTION YEAR 2000 LIABILITY

AN ACT relating to the liability of financial institutions and credit unions for malfunctions or failures of computer or other electronic systems as the result of a year 2000 disruption; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Comparative responsibility" means any act or omission that is negligent or willful, assumption of risk, breach of warranty, misuse of a product, or failure to use reasonable care to avoid or mitigate damage.
2. "Economic damages" means actual monetary losses proximately caused by a year 2000 disruption. The term does not include projected losses of future income or earnings and lost future business or employment opportunities.
3. "Year 2000 disruption" means a malfunction or failure of a computer or other electronic information or a malfunction or failure of an operating system or of equipment, including an electrical or telecommunications malfunction or failure, which prevents the system or equipment from correctly reading or processing data fields containing time or date information, functioning consistently regarding that time or date information, or from correctly calculating, comparing, or sequencing time or date information.
4. "Year 2000 readiness plan" means the process by which a federally insured financial institution or credit union prepares the computers and other electronic information and operating systems and equipment under the financial institution's or credit union's control to correctly read and process time and date information and to function consistently regarding that time and date information.

SECTION 2. Year 2000 readiness plan. Notwithstanding any other provision of law, this Act governs every claim for relief in which damages are sought from a federally insured financial institution or credit union for an alleged year 2000 disruption if the financial institution or credit union has made a good-faith effort to make and implement a year 2000 readiness plan. A financial institution or credit union that has substantially complied with the requirements of the financial institution's or credit union's primary federal regulator to address potential year 2000 disruptions is conclusively presumed to have made a good-faith effort to make and implement a year 2000 readiness plan.

SECTION 3. Time for commencing action. A claim for relief in connection with a year 2000 disruption must be commenced before January 1, 2001. Any claim that is not timely brought is barred.

SECTION 4. Requirement for privity of contract. A federally insured financial institution or credit union may not be held liable to any person not in privity of contract with the financial institution or credit union for damages or other relief relating to a year 2000 disruption.

SECTION 5. Liability for actual damages. The liability of a federally insured financial institution or credit union that experiences a year 2000 disruption is limited to actual economic damages.

SECTION 6. Comparative responsibility. A contributory act or omission does not bar recovery in an action under this Act, unless the contributory act or omission was as great as the combined responsibility of every other person whose act or omission contributed to the economic damages. Any damages allowed, however, must be diminished in proportion to the amount of a contributing act or omission that is attributable to the person making the recovery. The court may, and if requested by any party, shall direct the jury to find separate special verdicts determining the amount of economic damages and the percentage of responsibility attributable to each contributing person, regardless of whether the contributing person is a party to the action. In the case of contribution, the court shall reduce the amount of damages in proportion to the amount of responsibility to the person recovering. If two or more parties contributed, 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 responsibility of that particular party.

SECTION 7. Elimination of damages other than economic damages. A party claiming relief from a federally insured financial institution or credit union as a primary consequence of a year 2000 problem may not be awarded punitive damages, consequential damages, extraordinary damages, noneconomic damages, or any other relief in excess of economic damages.

SECTION 8. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved March 15, 1999
Filed March 15, 1999

LABOR AND EMPLOYMENT

CHAPTER 308

HOUSE BILL NO. 1096

(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

EMPLOYER PAYMENT FOR DRUG TESTS

AN ACT to amend and reenact section 34-01-15 of the North Dakota Century Code, relating to employer payment for required drug tests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-01-15 of the North Dakota Century Code is amended and reenacted as follows:

34-01-15. Employer to pay for medical examination - Penalty for violation. Whenever ~~any~~ an employer requires an employee, or prospective employee, to take a medical examination, or furnish any medical records, as a condition of retaining or obtaining employment, ~~such~~ the employer shall bear the cost of ~~such~~ the examination or the furnishing of ~~such~~ the medical records. ~~Any~~ For purposes of this section, medical examination includes any test for the presence of drugs or alcohol. An employer violating any of the provisions of this section is guilty of an infraction.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 309**HOUSE BILL NO. 1094**

(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

LABOR RETALIATION COMPLAINT FILING

AN ACT to amend and reenact subsection 4 of section 34-01-20 of the North Dakota Century Code, relating to the time within which to file retaliation complaints with the department of labor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 34-01-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The department of labor may receive complaints of violations of this section and attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section must file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 310

HOUSE BILL NO. 1097

(Education Committee)

(At the request of the Department of Labor)

MINOR EMPLOYMENT AND COMPULSORY SCHOOL ATTENDANCE

AN ACT to amend and reenact sections 34-07-02 and 34-07-15 of the North Dakota Century Code, relating to employment of minors and compulsory school attendance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-07-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept. ~~No~~ A minor fourteen or fifteen years of age may not be employed or permitted to work in any 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 under subsection 2, 3, or 4 of section 15-34.1-03 or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company 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 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.

SECTION 2. AMENDMENT. Section 34-07-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted. ~~No~~ A minor fourteen or fifteen years of age may not 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 these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week 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~~ subsection 2, 3, or 4 of section 15-34.1-03. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of the notice must be furnished by the commissioner of

labor. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 311

HOUSE BILL NO. 1095

(Industry, Business and Labor Committee)
(At the request of the Department of Labor)

EMPLOYMENT AGENCY BOND REQUIREMENTS

AN ACT to amend and reenact section 34-13-07 of the North Dakota Century Code, relating to bond requirements to renew employment agency licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-13-07 of the North Dakota Century Code is amended and reenacted as follows:

34-13-07. Duration of license. Every license, unless previously revoked, remains in force until one year after its issue, and every employment agent shall, upon payment of the amount of the license fee required and the filing of a new bond or an authenticated certificate continuing a bond previously approved by the commissioner, have issued to it a license for the ensuing year, unless the commissioner refuses to do so for any of the reasons stated in this chapter.

Approved March 25, 1999
Filed March 25, 1999

LIENS

CHAPTER 312

HOUSE BILL NO. 1367 (Representatives Svedjan, Keiser)

SATISFIED MORTGAGE DISCHARGE

AN ACT to amend and reenact section 35-01-27 of the North Dakota Century Code, relating to discharge of a satisfied mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-01-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-01-27. Discharge of mortgage or lien on real property ~~must be furnished on demand~~ - Penalty. ~~When~~ Within sixty days after any mortgage or other lien upon real property ~~has been~~ is satisfied; ~~immediately upon~~ or within thirty days of receipt of a written demand of the owner of the property, whichever is shorter, the owners of the mortgage or other lien shall execute a certificate of discharge duly acknowledged, and cause a satisfaction of record to be entered. The fee for filing the satisfaction must be paid by the owner of the property or added to the debt paid by the owner of the property. Any mortgagee or owner of a mortgage or lien who ~~refuses~~ fails to execute or deliver a discharge or to enter a satisfaction as ~~herein~~ provided under this section is liable to the owner of the property for all damages sustained ~~by reason~~ as a result of such ~~the~~ the refusal and exemplary damages of one hundred dollars.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 313

HOUSE BILL NO. 1180

(Agriculture Committee)

(At the request of the Secretary of State)

CENTRAL INDEX FILINGS

AN ACT to amend and reenact subsection 1 of section 35-13-02, section 35-20-16, subsection 2 of section 35-34-04, subsection 2 of section 35-34-06, subsections 3, 5, and 6 of section 41-09-46, sections 57-38-49, 57-38-50, subsections 3, 4, and 6 of section 57-39.2-13, subsections 3, 4, and 6 of section 57-40.2-16, subsections 2, 3, and 4 of section 57-40.3-07.1, subsections 3, 4, and 6 of section 57-43.1-17.4, subsections 3, 4, and 6 of section 57-43.2-16.3, and subsections 2 and 3 of section 57-51-11 of the North Dakota Century Code, relating to the filings indexed in the central indexing system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 35-13-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall prescribe one form that ~~must~~ can be used to obtain a lien under this section and ~~gain protection under~~ also be entered in the central ~~notice~~ indexing system. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:
 - a. The labor performed.
 - b. The materials furnished.
 - c. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
 - d. The name of the person for whom the labor was performed or to whom the materials were furnished.
 - e. The social security number, if available, or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number, if available, of the person for whom the labor was performed or to whom the materials were furnished.

- f. The name and address of the person claiming the lien.
- g. A description of the property upon which the lien is claimed.

SECTION 2. AMENDMENT. Section 35-20-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing. The secretary of state shall prescribe a form that can be used to obtain a lien under this section and also be entered in the central ~~notice~~ indexing system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the office of the register of deeds of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.
4. The nature and quantity of insurance coverage provided.
5. The amount of unpaid earned premium.
6. A description of the property covered by the insurance and subject to the lien.
7. That a lien is claimed upon the property described.

SECTION 3. AMENDMENT. Subsection 2 of section 35-34-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central ~~notice~~ indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.

SECTION 4. AMENDMENT. Subsection 2 of section 35-34-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The information filed with a register of deeds or with the secretary of state under this section must be included in the computerized central ~~notice~~ indexing system maintained by the secretary of state under section 41-09-46 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central ~~notice~~ indexing system.

²³² **SECTION 5. AMENDMENT.** Subsections 3, 5, and 6 of section 41-09-46 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The secretary of state shall develop and implement a computerized central ~~notice~~ indexing system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, and 41-09-40. The system must connect each register of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central ~~notice~~ indexing system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central ~~notice~~ indexing system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.

5. Upon a verbal request of any person, the secretary of state or a designee or a register of deeds shall verbally provide information contained on the list generated through the computerized central ~~notice~~ indexing system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central ~~notice~~ indexing system to lose its federal certification. The fee for a verbal request and such a certificate must be as provided by section 41-09-42.

²³² Section 41-09-46 was also amended by section 19 of Senate Bill No. 2043, chapter 483.

6. A computer printout from the computerized central ~~notice~~ indexing system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

SECTION 6. AMENDMENT. Section 57-38-49 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-49. Preservation of lien. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central ~~notice~~ indexing system the following data:

1. The name of the taxpayer.
2. The tax identification number or social security number of the taxpayer.
3. The name "State of North Dakota" as claimant.
4. The date and time the notice of lien was indexed.
5. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

SECTION 7. AMENDMENT. Section 57-38-50 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-50. Satisfaction of lien. Upon payment of the tax, together with any accrued penalties and interest, as to which the commissioner has filed a notice of lien, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system without fees or costs.

SECTION 8. AMENDMENT. Subsections 3, 4, and 6 of section 57-39.2-13 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

SECTION 9. AMENDMENT. Subsections 3, 4, and 6 of section 57-40.2-16 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

SECTION 10. AMENDMENT. Subsections 2, 3, and 4 of section 57-40.3-07.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the

commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.

3. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the indexing or the satisfaction of the lien.

4. Upon payment of the tax relative to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

SECTION 11. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.1-17.4 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system

without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

SECTION 12. AMENDMENT. Subsections 3, 4, and 6 of section 57-43.2-16.3 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

SECTION 13. AMENDMENT. Subsections 2 and 3 of section 57-51-11 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central ~~notice~~ indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a register of deeds before August 1, 1997, may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

- 3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-51-06, as to which the commissioner has indexed a notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 314

SENATE BILL NO. 2119

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

SECRETARY OF STATE AND REGISTER OF DEEDS FILING FEES

AN ACT to amend and reenact sections 35-17-08, 35-29-05, 35-30-06, 35-31-06, and subsections 5 and 11 of section 41-09-42 of the North Dakota Century Code, relating to filing fees collected by the secretary of state and county register of deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-17-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-17-08. Fees - Penalty. The fee for filing an agister's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agister's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien is satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 2. AMENDMENT. Section 35-29-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-29-05. Fees.

1. The fee for filing and indexing each notice of lien is:
 - a. For a lien on real estate, five dollars, plus two dollars for the second and each succeeding page.
 - b. For a lien on tangible and intangible personal property, ~~five~~ ten dollars.
 - c. For a certificate of discharge or subordination, ~~five~~ ten dollars.
 - d. For a nonstandard statement when presented for filing, an additional fee of five dollars plus one dollar per page.
 - e. For all other notices, including a certificate of release or nonattachment, five dollars.
2. The officer may not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

SECTION 3. AMENDMENT. Section 35-30-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-30-06. Fees - Penalty. The fee for filing an agricultural processor's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural processor's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 4. AMENDMENT. Section 35-31-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-31-06. Fees - Penalty. The fee for filing an agricultural supplier's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural supplier's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

SECTION 5. AMENDMENT. Subsections 5 and 11 of section 41-09-42 of the 1997 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~~ ten 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, seven dollars.
 - c. For completing a certificate requesting information, seven dollars for the first five entries and two dollars for each additional five entries or fraction thereof.
 - d. For completing a certificate requesting copies, seven dollars for the first three copies or fraction thereof, and two dollars for each additional copy.
 - e. For furnishing copies only of any filed instrument, one dollar.

11. The fee for furnishing lists pursuant to subsection 4 of section 41-09-46 must be established by the secretary of state; ~~but not to exceed twenty-five dollars for a microfiche list and~~ based on actual cost for a printed list costs to produce the lists for distribution.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 315

SENATE BILL NO. 2229

(Senators Freborg, Watne)

LIEN RELEASE BY UNDERTAKING

AN ACT to amend and reenact sections 35-21-02, 35-21-03, 35-21-04, and 35-21-05 of the North Dakota Century Code, relating to the release of a lien by an undertaking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-21-02 of the North Dakota Century Code is amended and reenacted as follows:

35-21-02. Filing of application, affidavit and undertaking for release of lien.

The owner of the property to be released by undertaking, or of a substantial interest therein in the property, shall ~~cause to be filed~~ file the following with the officer ~~having control of the record of the lien, his clerk of the district court for the county in which the lien is filed:~~

1. An application for the release of the lien by undertaking;
2. An affidavit; ~~or the affidavit of his agent or attorney,~~ describing his the owner's interest in ~~said~~ the property and stating that the owner has a defense against the collection of the lien, or a part ~~thereof~~ of the lien, and that there exists a disagreement between the parties as to the amount or validity of the lien, and that the owner desires a discharge of the lien from the records. ~~He shall cause to be filed with the officer an;~~ and
3. An undertaking, in an amount not less than the lien, with two sureties ~~thereon~~, to the effect that the owner will pay any amount that may be recovered by the lien claimant, together with all costs. ~~The sureties shall justify in not less than the amount of the lien.~~

SECTION 2. AMENDMENT. Section 35-21-03 of the North Dakota Century Code is amended and reenacted as follows:

35-21-03. Affidavit Application, affidavit, undertaking, and notice of hearing time to except sureties served on lien claimant. A copy of the application for release of lien by undertaking, the affidavit, ~~and of the undertaking~~, together with a notice designating the time when and place where the application will be made for release ~~of the lien~~ of when exception to the sureties must be made, must be served on the lien claimant or ~~his~~ on the claimant's agent or attorney ~~in the following manner:~~ personally; ~~not less than five days before the time of the application;~~ or by registered ~~or certified~~ mail at least ten days before the time of the application. Proof of personal service must be made in the manner required for proof of service of a summons in a civil action. ~~Proof of service by registered or certified mail must be made by affidavit showing that copies of the notice, undertaking, and affidavit were enclosed in an envelope, properly addressed to the lien claimant, sealed, with sufficient postage attached to carry it to its destination, and by attaching the postmaster's receipt.~~

SECTION 3. AMENDMENT. Section 35-21-04 of the North Dakota Century Code is amended and reenacted as follows:

35-21-04. ~~Hearing on application~~ Exception to sureties - Justification by sureties - Discharge of lien. ~~At the time and place specified in the notice for the hearing, the lien claimant or his agent or attorney may except~~ If the clerk of court receives an exception to the sufficiency of the surety, and thereupon, ~~the sureties may justify before the officer named in the original notice.~~ The statute governing justification in title 32 sureties within seven days of the date of service, the clerk shall schedule a hearing before the district court judge at which the sureties may be justified. The clerk shall provide notice of the hearing to both the lien claimant and the applicant for the discharge by undertaking. Chapter 32-02 governs the justification of the sureties. If the sureties, or others substituted, fail to justify within ten days from the date named for the hearing, said application must be dismissed. If no clerk of court does not receive an exception is taken to the sufficiency of the sureties, or if within seven days from the date of service, the clerk of court shall issue an order stating that the lien is discharged by undertaking and directing either the register of deeds or the secretary of state, as appropriate, to file the order of discharge to terminate the lien and to remove the lien from any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". If the sureties justify as herein provided in this section, and if the officer having control of the record of the lien approves the undertaking is approved, the lien must be discharged of record by an entry on the margin of the record thereof as follows: "Discharged judge shall enter an order that the lien is discharged by undertaking and direct the register of deeds or the secretary of state, as appropriate, to file the order of discharge and terminate the lien on any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". The officer shall date and sign the discharge, and thereafter After the order, the lien is of no effect.

²³³ **SECTION 4. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-21-05. Fee - Recordation - Certified copies as evidence. ~~If the presiding officer is the clerk of the district court, the~~ The clerk may charge a fee as prescribed in subdivision d of subsection 1 of section 11-17-04 to be paid in advance by the applicant. ~~If the officer is the clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a recording system provided for that purpose. If the officer is the register of deeds, the officer shall record the same in the book of miscellaneous records. The register of deeds may charge a fee as provided by section 44-18-05.~~ Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters ~~therein contained~~ they contain.

Approved April 8, 1999
Filed April 8, 1999

²³³ Section 35-21-05 was also amended by section 8 of House Bill No. 1042, chapter 107, and section 58 of House Bill No. 1275, chapter 278.

CHAPTER 316

HOUSE BILL NO. 1179

(Judiciary Committee)

(At the request of the Secretary of State)

NONCONSENSUAL COMMON-LAW LIEN FILING

AN ACT to create and enact chapter 35-35 of the North Dakota Century Code, relating to the filing of nonconsensual common-law liens; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 35-35 of the North Dakota Century Code is created and enacted as follows:

35-35-01. Definitions.

1. "Filing officer" includes a county register of deeds, the secretary of state, and any other government employee who is required in the course of the employee's duties to file or record liens.
2. "Nonconsensual common-law lien" means a document that purports to assert a lien against real or personal property of any person and:
 - a. Is not expressly provided for by a specific state or federal statute;
 - b. Does not depend upon the consent of the owner of the property affected; and
 - c. Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

35-35-02. Nonconsensual lien unlawful - Penalty.

1. Any person who submits for filing or recording a nonconsensual common-law lien as defined in this chapter is guilty of a class B misdemeanor.
2. This section does not apply to a filing officer who acts in the course of the employee's official duties in filing or recording an instrument submitted to the employee for filing or recording.

35-35-03. Filing officer may reject lien - Filing officer to accept notice of invalid lien - Filing officer not liable.

1. Any filing officer may reject for filing or recording any nonconsensual common-law lien.
2. If a nonconsensual common-law lien has been accepted for filing or recording, the filing officer shall accept for filing any sworn notice of invalid lien signed and submitted by the person against whom such a lien was filed or that person's attorney. The notice must be captioned

"Notice of Invalid Lien" and must state the name and address of the person on whose behalf the notice is filed, the name and address of the lien claimant, and a clear reference to the document or documents the person believes constitute a nonconsensual common-law lien. The notice must be filed in such a manner that any search of the records which reveals the lien the notice refers to will also reveal the notice of invalid lien. The filing officer shall mail a copy of the notice of invalid lien to the lien claimant at the lien claimant's last known address within one business day.

3. A filing officer, county, or the state may not be held liable for filing a nonconsensual common-law lien, or for filing a sworn notice of invalid lien pursuant to this section.

35-35-04. Lien claimant may petition court - Procedure - Order to show cause - Remedies - Order to be filed.

1. Any person who submits for filing or recording a lien against real or personal property which is rejected by the filing officer as a nonconsensual common-law lien may petition the district court of the county in which the document was rejected for an order directing the filing officer to file or record the document pending a hearing on whether the document constitutes a nonconsensual common-law lien. The order may be granted ex parte. The lien claimant, as petitioner, shall appear at a time scheduled by the court and show cause why the document should not be declared a nonconsensual common-law lien with no legal effect and relief as provided in section 35-35-06 granted to the person against whom the document was attempted to be filed.
2. The petition must state the grounds upon which relief is sought and must be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the claim for relief is based.
3. Any order rendered under this section must clearly state that if the lien claimant fails to appear at the time and place noted in the order, the document must be declared a nonconsensual common-law lien with no legal effect and the lien claimant must be ordered to pay damages to the person against whom the document was attempted to be filed in the amount of one thousand dollars or actual damages, whichever is greater, and costs, including reasonable attorney's fees.
4. If, after a hearing on the matter, the court determines that the document is a nonconsensual common-law lien, the court shall issue an order so declaring, and declaring the document to have no legal effect and awarding damages as provided in section 35-35-06 to the person against whom the document was attempted to be filed.
5. If the court determines that the document is not a nonconsensual common-law lien, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the prevailing party.
6. The district court clerk shall file a copy of any order rendered pursuant to this section in the office of the filing officer who rejected the document for filing.

35-35-05. Petition to declare lien invalid - Procedure - Order to show cause - Remedies - Order to be filed.

1. Any person who has real or personal property or an interest therein, which is subject to a filed or recorded nonconsensual common-law lien may petition the district court for the county in which the lien is filed or recorded for an order directing the lien claimant to appear before the court to show cause why the lien should not be declared void and the relief provided for by section 35-35-06 granted to the petitioner. The order directing the lien claimant to appear and show cause may be granted ex parte. The petitioner shall serve the order and petition on the lien claimant by personal service or by mailing copies of the petition and order to the lien claimant at the lien claimant's last known address.
2. The petition must state the grounds upon which relief is requested, and must be supported by the affidavit of the petitioner, or the petitioner's attorney, setting forth a concise statement of the facts upon which the claim for relief is based.
3. Any order rendered under this section must clearly state that if the lien claimant fails to appear at the time and place noted in the order, the lien must be declared void ab initio and released and removed from the filing officer's files or records, and the lien claimant must be ordered to pay damages of one thousand dollars or actual damages, whichever is greater, and the costs incurred by the petitioner, including reasonable attorney's fees.
4. If, after a hearing on the matter, the court determines that the document is a nonconsensual common-law lien, the court shall issue an order declaring the lien void ab initio, directing the filing officer to release and remove the lien from the files and records and awarding damages as provided in section 35-35-06 to the petitioner.
5. If the court determines that the lien is not a nonconsensual common-law lien, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the prevailing party.
6. The district court clerk shall file a copy of any order rendered pursuant to this section in the office where the lien was filed.

35-35-06. Liability for submitting certain documents for filing - Penalty. Any person who submits for filing or recording to the office of a filing officer any document purporting to create a nonconsensual common law lien against real or personal property is liable to the person against whom the lien is claimed for actual damages or one thousand dollars, whichever is greater, plus costs and reasonable attorney's fees. These damages and costs may be awarded in any action brought under section 35-35-04 or 35-35-05 or in a separate action for damages.

Approved March 11, 1999
Filed March 11, 1999

LIVESTOCK

CHAPTER 317

HOUSE BILL NO. 1276

(Representative Berg)

(Senator Solberg)

LIVESTOCK REGULATION

AN ACT to create and enact a new section to chapter 36-01, a new section to chapter 36-05, and a new section to chapter 36-14 of the North Dakota Century Code, relating to livestock unfit for sale and animals imported into the state; to amend and reenact sections 36-01-05, 36-01-07, 36-01-08, 36-01-08.1, 36-01-08.3, 36-01-08.4, 36-01-13, 36-01-14, 36-01-28, 36-05-01, subsection 4 of section 36-05-13.2, sections 36-07-07, 36-14-10, 36-14-20, 36-14-21, 36-15-01, 36-15-02, 36-15-08.1, 36-15-09, 36-15-14, 36-15-19, 36-15-21, 36-15-22, and subsection 1 of section 36-21.1-06 of the North Dakota Century Code, relating to the board of animal health, livestock auction markets, rendering plants, contagious and infectious livestock diseases, tuberculosis and brucellosis eradication in animals, and humane treatment of animals; to repeal sections 36-14-04, 36-14-05, 36-14-06, 36-14-07, 36-15-08, and 36-15-12 of the North Dakota Century Code, relating to horses, cattle, sheep, and swine imported into the state, compensation for owners of animals infected with tuberculosis or paratuberculosis, and bovine tuberculosis and brucellosis funds; to provide a penalty; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-05. State veterinarian - Appointment. The commissioner shall, with the consent of the board, appoint the state veterinarian and deputy state veterinarian. ~~However, the commissioner's first appointments to the positions of state veterinarian and deputy state veterinarian must be the persons serving in those capacities for the board of animal health on the day before August 4, 1995.~~ The state veterinarian and deputy state veterinarian must be competent and skilled veterinarians and graduates of a veterinary medicine and surgery course at a recognized college or university. The commissioner may remove the state veterinarian or deputy state veterinarian for cause. At the request of the board, the commissioner shall deputize persons licensed to practice veterinary medicine in this state as assistant state veterinarians. Deputized persons shall serve during periods of emergency and only for the time period determined by the board.

SECTION 2. AMENDMENT. Section 36-01-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-07. Bacteriologist and consulting Consulting veterinarian of board - Duties - Compensation. The professor of veterinary science of the North Dakota

state university of agriculture and applied science shall board shall choose a veterinarian on staff at North Dakota state university to act as bacteriologist and consulting veterinarian to the board. The bacteriologist term of appointment is open and at the will of the board. At the discretion of the board, the consulting veterinarian, or any United States department of agriculture approved laboratory shall make bacteriological or pathological diagnostic examinations of all diseased animals or portions thereof or of such material as may be forwarded to the bacteriologist by the board or the commissioner's duly authorized agents. The bacteriologist shall furnish material for the diagnosis of contagious diseases and instruction as to its use. For services, the bacteriologist consulting veterinarian or United States department of agriculture approved laboratory is entitled to receive such compensation as the commissioner may deem proper, which must be paid out of the fund appropriated for the use of the commissioner.

SECTION 3. AMENDMENT. Section 36-01-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08. Duties - Rules - Fees. The board shall protect the health of the domestic animals and nontraditional livestock of this state, shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals and nontraditional livestock of this state, and shall prevent the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests. For the purpose of preventing the escape and release of an animal injurious to or competitive with agriculture, horticulture, forestry, wild animals, and other natural resource interests, the board may, by rule, quarantine any such animal, cause any such animal to be killed, regulate or prohibit the arrival in or departure from this state of any such animal, and at the cost of the owner thereof, the board may detain any animal found to be in violation of any rule or prohibition. Any matter relating to the health and welfare of domestic animals and nontraditional livestock and not specifically assigned by statute to another entity is deemed to be within the authority of the board. The board may make rules to carry into effect the purposes of this chapter and other duties prescribed in this title. The commissioner shall collect six cents for each brucellosis tag and each identification tag and eight dollars for each health book the commissioner distributes. The fees collected by the commissioner must be deposited in the state general fund.

²³⁴ **SECTION 4. AMENDMENT.** Section 36-01-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.1. ~~Captive wildlife~~ Nontraditional livestock license - Fee. The board of animal health may require a license for ~~captive wildlife~~ nontraditional livestock maintained within this state. The annual fee for a license for a bird species required to be licensed is ~~five~~ seven 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~~ forty dollars. The annual fee for a license for any other species required to be licensed is ~~ten~~ fifteen 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~~ one hundred dollars.

²³⁴ Section 36-01-08.1 was also amended by section 52 of House Bill No. 1045, chapter 50.

SECTION 5. AMENDMENT. Section 36-01-08.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.3. Duties - Evaluations - Report. The board and the commissioner shall conduct performance evaluations of the state veterinarian and any assistant state veterinarians; review the short-term and the long-term role and mission of the board and its employees; review alternatives for the enhancement of, and the efficient delivery of, services provided by the board and its employees; and evaluate the consolidation and cooperation with the department of agriculture. The board shall report to the governor and the legislative council before September 1, 1996, and each year thereafter.

SECTION 6. AMENDMENT. Section 36-01-08.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-08.4. Ownership of skunks and raccoons prohibited - Exception - Rules - Penalty on primates, wolves, and wolf hybrids. ~~No~~ A person may not keep a skunk or raccoon in captivity. This section does not apply to a zoo licensed by the regulatory enforcement and animal care program of the animal and plant health inspection service of the United States department of agriculture. The state veterinarian shall confiscate and dispose of any animal kept in violation of this section. The board shall adopt rules governing the keeping of a primate, wolf, or wolf hybrid in captivity and to implement this section. As used in this section, "primate" does not include a human being; "wolf" means any animal of the species *canis lupus*; and "wolf hybrid" means any animal that is any part wolf. ~~A person who willfully violates this section is guilty of a class B misdemeanor.~~

SECTION 7. A new section to chapter 36-01 of the North Dakota Century Code is created and enacted as follows:

Confiscation of nontraditional livestock held in violation of this chapter.

1. The state veterinarian, or the state veterinarian's designee, a police officer, sheriff, or other law enforcement officer may seize any nontraditional livestock located on private property from the animal's owner or custodian if probable cause exists to believe that the animal is being held in violation of this chapter or rules adopted under this chapter. Unless it is shown that there exists an exigency or occasion as to require the immediate confiscation, an animal may not be seized until a hearing is held allowing the owner or custodian to show cause why the animal should not be confiscated. If exigent circumstances exist, an ex parte order may be issued authorizing seizure of the animal if probable cause appears to the court that:
 - a. The animal is in immediate danger of being released into the wild, destroyed, concealed, removed from the state, or sold or given to an innocent party.
 - b. The animal is infected with any contagious or infectious disease capable of being spread to animals or humans.

All animals seized must be held subject to the order of a court of competent jurisdiction. Whenever probable cause exists for a preconfiscation hearing, the owner or custodian of the animal must be notified in writing that, on the day fixed for a hearing, which may not be less than three days from the date of receipt of notice, the owner or

custodian may appear or show cause why the animal should not be confiscated. Notice must be delivered to the owner or custodian by personal service or registered mail to that person's last-known mailing address. An affidavit of service or the post-office registration receipt signed by the owner or custodian is prima facie evidence of service of notice.

2. Upon request by the person confiscating the animal, the board, the state department of health, the game and fish department, any county sheriff's office, city police department, or other peace officer may provide assistance in any action to seize, impound, confiscate, or quarantine any animal suspected of being held or possessed in violation of this title.
3. A court having jurisdiction of an alleged offense under this title or rules adopted under this chapter may order the disposition of all animals that have been confiscated. This order may be entered only after a hearing duly had upon proper notice to the owner or custodian and after a finding by the court that the animal was being held or possessed in violation of this title at the time it was seized.
4. When any nontraditional livestock is found to be held or possessed contrary to this chapter, the court may:
 - a. Order the animal to be forfeited by its owner or custodian and that the animal be destroyed or disposed of otherwise. The court may order disposition to a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture if the zoo requests possession upon confiscation of the animal; or
 - b. Order the return of custody to the owner or custodian upon compliance with all applicable state and local regulations governing ownership and possession of nontraditional livestock, including payment of any license fees.

The court may award reasonable costs of seizure, care, and keeping pending disposition, and attorneys' fees to the agency bringing an action to confiscate any nontraditional livestock under this title.

5. Subject to section 32-12.2-02, the owner of an animal may bring a claim for money damages, and may recover the amount of actual damages incurred during the time of seizure, if the owner establishes that before the animal was seized under this chapter, the agency knew or recklessly failed to determine that the animal, at the time of seizure, was lawfully owned and licensed in this state or that the animal was a domestic animal not subject to seizure under this chapter.

SECTION 8. AMENDMENT. Section 36-01-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-13. Diseased animal to be reported - Records exempt.

1. Any person who discovers, suspects, or has reason to believe that any domestic animal or nontraditional livestock belonging to that person or belonging to any other person, is affected by any reportable contagious

disease as defined by the board, shall report that knowledge, suspicion, or belief to:

- ~~4. The the state veterinarian or any other agent or representative of the commissioner; or~~
- ~~2. 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 commissioner or the state veterinarian and failure to do so constitutes a violation of this chapter.~~
2. The records are exempt from open records laws, except those records concerning diseases that are specifically regulated by mandatory control and eradication programs or to protect public health.

SECTION 9. AMENDMENT. Section 36-01-14 of the 1997 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 nontraditional livestock has been determined to be affected with a contagious or infectious disease and has been ordered killed by the board, the state veterinarian, or an agent or representative of the board, the owner or keeper of the animal must be notified of the order. Notice may be accomplished by sending, by registered 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 or laboratory reports 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 10. AMENDMENT. Section 36-01-28 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-28. Enforcement orders - Administrative hearing - Penalty.

1. Except when otherwise ordered by a court of competent jurisdiction, the board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed. The board may grant an exception for any nontraditional livestock if a zoo licensed by the animal care program of the animal and plant health inspection service of the United States department of agriculture takes possession upon confiscation of the animal.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animal or livestock is not in compliance with the provisions of this

chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.

3. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule adopted by the board of animal health, is guilty of a ~~class B misdemeanor~~ an infraction.

²³⁵ **SECTION 11. AMENDMENT.** Section 36-05-01 of the North Dakota Century Code is amended and reenacted as follows:

36-05-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of agriculture.
2. "Livestock" means horses, mules, asses, bison, cattle, swine, sheep, and goats.
3. "Livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market or a private buying station, consisting of pens or other enclosures and their appurtenances, in which livestock is received, held, or kept for sale and where such livestock is sold or offered for sale, at either public auction or private sale.

SECTION 12. A new section to chapter 36-05 of the North Dakota Century Code is created and enacted as follows:

Livestock unfit for sale. Livestock may not be offered for sale or sold at any licensed public livestock auction market if the livestock has a condition including the following:

1. Is infected with a disease that permanently renders the livestock unfit for human consumption;
2. Has severe neoplasia;
3. Has severe actinomycosis;
4. Is unable to rise to its feet by itself; or
5. Has an obviously fractured long bone or other fractures or dislocation of a joint that renders the livestock unable to bear weight on the affected limb without the limb collapsing.

If, in the judgment of a veterinarian licensed in this state and approved by the board of animal health, the livestock consigned and delivered on the premises of a livestock auction market is in any of the conditions described above, the veterinarian shall humanely euthanize the livestock or direct the consignor to immediately remove the

²³⁵ Section 36-05-01 was also amended by section 6 of House Bill No. 1337, chapter 321.

livestock from the premises of the livestock auction market. All expenses incurred for euthanasia and disposal of the livestock under the provisions of this section are the responsibility of the consignor. Collection of expenses is not the responsibility of the consignee.

SECTION 13. AMENDMENT. Subsection 4 of section 36-05-13.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section ~~36-04-07.4~~ 36-05-09.1;

SECTION 14. AMENDMENT. Section 36-07-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-07-07. Unloading chutes and vehicles used by rendering plant - Regulations governing. All unloading places or chutes used by a rendering plant or establishment must be on cement floors ~~which that~~ can be cleaned and disinfected. Every vehicle used for transporting carcasses of dead animals to a rendering plant or establishment must:

1. Be provided with a bed or tank not less than fifty inches [127 centimeters] in width which is all metal, metal lined, or watertight for at least six inches [15.24 centimeters] above the floor of the box or bed.
2. Have a metal lined endgate ~~which that~~ is hinged at the bottom of the bed or box and is fastened firmly to the top of the bed or box when closed.
3. Be so constructed that the sides, top, and endgate thereof will prevent flies and other insects from entering the vehicle.
4. Carry a tank filled with a ~~four percent~~ solution of ~~creosol~~ approved by the state veterinarian for use as a disinfectant; ~~or other disinfectant as prescribed by the rules adopted by the state board of animal health.~~
5. Be disinfected with the solution described in subsection 4 after it has been used for collecting a dead animal at a farm and before it enters upon any public highway of this state, and special attention must be given to all those parts of the vehicle which came in contact with the ground while upon the premises.
6. Be thoroughly washed and disinfected with the solution described in subsection 4 or with live steam, or both, after it has been unloaded at the rendering plant.

The operator of any such vehicle shall ~~disinfect himself~~ wash with disinfectant, paying special attention to ~~his~~ disinfecting the operator's hands and footwear, with the solution described in subsection 4 immediately after leaving any farm at which ~~he~~ the operator has collected the carcass of a dead animal.

SECTION 15. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Animals imported into state to have certificate of veterinary inspection - Exception.

1. Except as otherwise provided by this chapter or by rule, all domestic animals and nontraditional livestock brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of all contagious and infectious diseases, and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination.
2. The requirement for a certificate of veterinary inspection is waived for cattle, sheep, or swine originating directly from a producer's premises and not diverted en route, if the waiver is approved by the state veterinarian and the cattle, sheep, or swine are delivered for sale directly to a licensed auction market or other premises approved by the state veterinarian.
3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.
4. The board may adopt rules to implement this section.

SECTION 16. AMENDMENT. Section 36-14-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-10. Shipments of ~~cattle, swine, and sheep~~ animals for immediate slaughter. Shipments into this state of ~~cattle, swine, and sheep~~ animals for immediate slaughter may be permitted without a certificate of veterinary inspection only if the ~~livestock~~ animals are not diverted en route and are delivered directly to a slaughtering establishment approved by the commissioner of agriculture.

SECTION 17. AMENDMENT. Section 36-14-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-20. Duty of overseer of highways ~~or coroner~~ when carcass of dead animal is found - Fees - Recovery of expense. If the owner or person in charge of a dead animal fails to comply with the provisions of section 36-14-19, the overseer of highways; ~~or the county coroner in a district which has no overseer,~~ shall comply with the provisions of section 36-14-19 for the owner or person. If burial of the animal is permitted, the burial may be made upon the premises of the owner or person in charge of the animal at any place more than one thousand feet [304.8 meters] from any dwelling house or barn. The board of county commissioners shall allow in payment a sum for disposal services as it deems to be reasonable, and the sum must be paid as other moneys are paid for services rendered to the county. The owner of the animal is liable to the county for any amount paid out for disposal services. If the owner does not pay that amount within thirty days after written

demand for payment is made upon ~~him~~ the owner by the county auditor, the sum may be recovered in a civil action, and the judgment must include the costs of the suit and a reasonable attorney's fee to be fixed by the court. No property except absolute exemptions is exempt from sale for the payment of any such judgment. Any attorney's fee allowed by the court must be paid to the county if the action is brought by the state's attorney.

SECTION 18. AMENDMENT. Section 36-14-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-14-21. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any domestic animal or nontraditional livestock brought into this state which is not in compliance with the provisions of this chapter to be returned to the state of origin, or in the alternative, the board may order the animal slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in this state and the animals or livestock are not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed five thousand dollars per violation may be assessed against that person.
3. Any person who knowingly violates any rule of the ~~state~~ board of ~~animal health~~, or who violates any provision of this chapter for which another penalty is not provided, is guilty of a ~~class A misdemeanor~~ an infraction.

SECTION 19. AMENDMENT. Section 36-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Animals" means ~~neat cattle~~ bovine animals or bison.
2. "Board" means the state board of animal health.
3. "Diseased", when used to describe any animals, means animals infected with either bovine tuberculosis or paratuberculosis (Johne's disease) brucellosis.
4. The singular of any term imports the plural and the plural of any term includes the singular.

SECTION 20. AMENDMENT. Section 36-15-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-02. Notice of condemnation of diseased animal - Animal to be destroyed within fifteen days - Extension of time. Whenever any animal has been adjudged by the board to be infected with bovine tuberculosis or brucellosis, the board or its authorized agent shall serve a written notice of its decision upon the owner or keeper of the animal before the condemned animal is killed. The animal must be destroyed within fifteen days after notice of condemnation, in either a federal or state inspected slaughtering plant, or under the supervision of an agent of the board. The fifteen-day period may be extended by the state veterinarian if that person deems it

advisable due to the circumstances involved in each case, and the extension must be in writing. The notice must advise the owner or keeper of that person's right to protest against the diagnosis and determination of the board within twenty-four hours after the service of the notice upon that person. If no protest is made within such time by the owner or keeper of the condemned animal, it must be appraised in the manner provided in this chapter.

SECTION 21. AMENDMENT. Section 36-15-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-08.1. Owner entitled to compensation for ~~cattle~~ animals infected with ~~or exposed to brucellosis or bovine tuberculosis~~ - Board of ~~animal health~~ may make rules governing payments. When, in the discretion and judgment of the board of ~~animal health~~, ~~a herd of cattle~~ an animal is so seriously infected with ~~bovine~~ brucellosis; or bovine tuberculosis as to warrant disposal of the ~~entire herd~~ animal and all other exposed animals, the board is hereby authorized to approve indemnity payments, as funds are appropriated, on ~~all cattle in such herds~~ the animals in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules governing the payment of such compensation within the limits prescribed in this chapter.

²³⁶ **SECTION 22. AMENDMENT.** Section 36-15-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-09. Return of appraisement - Payment of claims for diseased animals. The return of an appraisement made under this chapter must be in writing and signed by the board or by the agent thereof which made the appraisement, or by the members of the board of appraisers if a reappraisement is made after a protest, and by the owner of the condemned animal. The return must be certified by the commissioner of agriculture to the state auditor, who shall draw a warrant upon the state treasurer in favor of the owner of the animal. The amount of indemnity paid by this state, however, must be, in the case of an animal condemned because it is infected with bovine tuberculosis or ~~paratuberculosis~~ brucellosis, one-third of the difference between the appraised value of the animal and the net value of the salvage received by the owner, however, the indemnity payments may not exceed twenty-five dollars for each grade animal or fifty dollars for each registered purebred animal, except, that if the federal government fails to provide an amount of indemnity equal to that provided by the state, the owner must be paid one-half of the difference between the appraised value of the animal and the net value of the salvage thereof. Before any indemnity payment is made for such registered purebred animals, a certificate of registration in a recognized herdbook must be submitted to the state veterinarian prior to the date set for slaughter of said animal. This state is not liable for indemnity under this chapter in excess of the amount appropriated for the payment of such indemnity by the legislative assembly and the state is not liable for indemnity for any animal killed during a biennium after the appropriation for such biennium has been exhausted.

SECTION 23. AMENDMENT. Section 36-15-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

²³⁶ Section 36-15-09 was also amended by section 8 of Senate Bill No. 2130, chapter 106.

36-15-14. Cattle Animals not to be permitted to enter state or area circumscribed by board for testing purposes. The ~~commissioner~~ state veterinarian shall enforce the tuberculin testing or the brucellosis testing of all cattle animals entering the state as prescribed by rule or in a circumscribed area as established by the board in accordance with the provisions of this chapter providing for the eradication of bovine tuberculosis or brucellosis, as the case may be, and the rules of the board relating to eradication. Whenever a circumscribed area is established by the board as an area in which all cattle animals are to be tuberculin tested or brucellosis tested, as the case may be, and the test is undertaken under the direction of the board, no other cattle animals may be permitted to enter the area except under a special permit and restrictions provided by the board unless:

1. If the animals in the area ~~is~~ are to be tuberculin tested, the cattle animals entering the area have been tuberculin tested under the direction of an agent of the board or are accompanied by a proper tuberculin test certificate ~~of veterinary inspection.~~
2. If the animals in the area ~~is~~ are to be brucellosis tested, the cattle animals entering the area have been brucellosis tested under the direction of an agent of the board or are accompanied by a proper brucellosis test certificate ~~of veterinary inspection.~~

SECTION 24. AMENDMENT. Section 36-15-19 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-19. Penalty for violation of provisions relating to testing of livestock animals. Any person who ~~refuses to assist in or~~ attempts to prevent the board or the commissioner from carrying out this chapter, or who violates any of the provisions of this chapter relating to the testing of cattle animals, is guilty of ~~a class B misdemeanor~~ an infraction.

SECTION 25. AMENDMENT. Section 36-15-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-21. Calfhod 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 calfhod vaccinated against brucellosis. Female cattle originating from free states that do not require North Dakota-origin female cattle to be calfhod 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 calfhod vaccinated" means a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official or an accredited veterinarian within age limits prescribed by the board 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 may grant an exception 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 26. AMENDMENT. Section 36-15-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-22. Enforcement orders - Administrative hearing - Penalty.

1. The board may order ~~cattle~~ animals brought into the state which are not in compliance with the provisions of this chapter to be returned to their state of origin, or in the alternative, the board may order the ~~cattle~~ animals to be slaughtered or destroyed.
2. If, after a hearing, the board finds that a person has brought, kept, or received ~~cattle~~ animals in this state and the ~~cattle~~ animals are not in compliance with the provisions of this chapter or rules adopted under this chapter, a civil penalty not to exceed ~~two~~ five thousand ~~five hundred~~ dollars per violation may be assessed against that person.

SECTION 27. AMENDMENT. Subsection 1 of section 36-21.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal found abandoned, unjustifiably exposed to cold or inclement weather, or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1. ~~It is a responsibility of such~~ A sheriff, police officer, licensed veterinarian, or investigator ~~to~~ may care for the ~~same~~ animal until it is redeemed by the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink. In all cases the owner, if known, must be immediately notified, or if the owner is unknown, notice must be given by publication in the manner prescribed by law. Such notice must inform the owner that such animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days after receiving the notice or after publication.

SECTION 28. REPEAL. Section 36-15-12 of the North Dakota Century Code and sections 36-14-04, 36-14-05, 36-14-06, 36-14-07, and 36-15-08 of the 1997 Supplement to the North Dakota Century Code are repealed.

SECTION 29. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state board of animal health, including its membership, its representation, and the nature and scope of its regulatory authority over nontraditional livestock. The legislative council shall report any findings, and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 318

SENATE BILL NO. 2187

(Senators Solberg, Bowman, Tomac)
(Representatives Berg, DeKrey, Meyer)

FEEDLOT AND BRAND FEES AND ESTRAY INSPECTIONS

AN ACT to provide for a special fund; to amend and reenact sections 36-01-30, 36-05-12, 36-09-18, 36-22-03, 36-22-04, and 36-22-08 of the North Dakota Century Code, relating to feedlot registration fees, brand recording and inspection fees, and estray inspections; to repeal section 36-22-05 of the North Dakota Century Code, relating to the estray fund; to provide for a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-01-30. Feedlot registration - Rules - Penalty. No person may operate a registered livestock feedlot without obtaining ~~from the commissioner~~ a registration number ~~from the chief brand inspector~~. The board may adopt rules for the operation of feedlots registered for the enforcement of brand inspection rules. Applications for registration must be made upon forms as may be prescribed by the board and must be accompanied by a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the state treasurer for deposit in the North Dakota stockmen's association fund. The board may adopt rules required for the purpose of assuring ~~that compliance with brand laws are complied with~~, availability of brand inspection certificates are available, and maintenance of proper records are maintained. A registration issued under this section may be revoked or suspended for violation of any law or any rule adopted by the board under this section. In addition, any person violating this section or any rule adopted by the board under this section is guilty of a class B misdemeanor. This section does not prohibit the operation of nonregistered feedlots.

SECTION 2. AMENDMENT. Section 36-05-12 of the North Dakota Century Code is amended and reenacted as follows:

36-05-12. Operator to warrant title to purchaser - Dispute in title of animal sold. The operator of each livestock auction market shall warrant to the purchaser the title of all livestock bought by ~~him~~ the purchaser through ~~such~~ the auction market and is liable to the rightful owner of any livestock sold through the auction market for the net proceeds in cash received ~~therefor~~ for the livestock. If the operator of an auction market is notified by an authorized brand inspector that there is a question as to whether or not any designated livestock sold through ~~such~~ the auction market is lawfully owned by the consignor ~~thereof~~ of the livestock, ~~such~~ the operator shall hold the proceeds received from the sale of the livestock for a reasonable time, not to exceed sixty days, to permit the consignor to establish ownership. At the expiration of such time, if the consignor fails to establish ~~his~~ lawful ownership of the livestock to the satisfaction of the brand inspector, the

proceeds must be ~~paid into~~ remitted to the state treasurer for deposit in the estrays North Dakota stockmen's association fund in accordance with the provisions of chapter 36-22.

SECTION 3. AMENDMENT. Section 36-09-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-09-18. Performance bond - ~~Disposition~~ Collection of fees - ~~Continuing appropriation~~ - Discrimination prohibited. ~~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 under this chapter must be deposited in the general fund of~~ remitted to the state treasurer for deposit in the North Dakota stockmen's association fund. ~~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.~~

SECTION 4. AMENDMENT. Section 36-22-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-22-03. Rules - Fees for inspection. The board of animal health ~~shall~~, with the advice of the officers of the North Dakota stockmen's association, ~~make~~ shall adopt rules regulating the inspection of cattle for brands at auction markets, packing plants, and buying stations and shall set the fees to be charged by the brand inspector. Brand inspectors under this chapter shall charge and collect fees for inspections on all shipments or consignments of cattle at livestock markets, at the rate authorized by the United States department of agriculture, and shall charge and collect fees for inspection at auction markets, buying stations, and packing plants as must be set by the board of animal health, ~~which funds, so.~~ The fees collected, must be paid into the general fund of remitted to the state treasurer for deposit in the North Dakota stockmen's association fund.

SECTION 5. AMENDMENT. Section 36-22-04 of the North Dakota Century Code is amended and reenacted as follows:

36-22-04. Collection of estray funds. ~~It is lawful for said~~ A brand inspectors of said association to ~~inspector may~~ receive and receipt for all funds from the sale of estray cattle and ~~turn~~ shall remit the same over funds to the state treasurer of said association for disbursement as hereinafter provided for deposit in the North Dakota stockmen's association fund.

SECTION 6. AMENDMENT. Section 36-22-08 of the North Dakota Century Code is amended and reenacted as follows:

36-22-08. Disposition of unclaimed receipts from sale of estrays. ~~Any funds in the hands of said association, or hereinafter received by it from the sale of estrays which are not claimed by the owners within one year from the posting of the notice provided for in section 36-22-07 must be turned in to the general fund of the association. All~~ The North Dakota stockmen's association shall preserve all records relative to estrays must be preserved by the association for a period of six years subsequent to the time the money reverts to is deposited by the state treasurer in the general North Dakota stockmen's association fund of the association. Provided,

~~however, that nothing herein bars. This section does not bar the lawful owner of any estray from maintaining an action against said the association for the recovery of any sum to which he the owner may be entitled within the period of limitation given by general law governing other claims for relief of like character if the action is commenced within six years after the sum is deposited.~~

SECTION 7. North Dakota stockmen's association fund - Continuing appropriation. The North Dakota stockmen's association fund is a special fund in the state treasury. The state treasurer shall deposit in the North Dakota stockmen's association fund all brand fees and estray funds received by the North Dakota stockmen's association in return for its performance of statutory duties and services and remitted to the state treasurer. All moneys in the North Dakota stockmen's association fund, together with all interest income earned by moneys in the fund, are appropriated on a continuing basis to the North Dakota stockmen's association to be used for the purpose of carrying out duties statutorily assigned to the association.

SECTION 8. REPEAL. Section 36-22-05 of the North Dakota Century Code is repealed.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1999

Filed March 23, 1999

CHAPTER 319

HOUSE BILL NO. 1315 (Representatives Tollefson, Wentz)

ANIMAL ABANDONMENT

AN ACT to amend and reenact section 36-21.1-02 of the North Dakota Century Code, relating to the abandonment of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-02 of the North Dakota Century Code is amended and reenacted as follows:

36-21.1-02. Overworking or, mistreating, or abandoning animals.

1. No person may overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when unfit for labor.
2. No person may deprive any animal over which ~~he~~ the person has charge or control of necessary food, water, or shelter.
3. No person may keep any animal in any enclosure without exercise and wholesome change of air.
4. No person may abandon any animal.
5. A person shall reclaim an animal within forty-eight hours of the agreed upon time for termination of a boarding contract and pay all charges for boarding the animal.
- ~~6.~~ 7. No person may willfully instigate, or in any way further, any act of cruelty to any animal or animals, or any act tending to produce such cruelty.
- ~~7.~~ 8. No person may cage any animal for public display purposes unless the display cage is constructed of solid material on three sides to protect the caged animal from the elements, and unless the horizontal dimension of each side of the cage is at least four times the length of the caged animal. ~~The provisions of this~~ This subsection ~~do~~ does not apply to the North Dakota state fair association, to agricultural fair associations, to any agricultural display of caged animals by any political subdivision, or to district, regional, or national educational livestock or poultry exhibitions. Zoos which have been approved by the health district or the governing body of the political subdivision which has jurisdiction over the zoos are exempt from ~~the provisions of~~ this subsection.

~~8. Repealed by S.L. 1975, ch. 106, § 397.~~

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 320

HOUSE BILL NO. 1290

(Representatives Meyer, Nicholas, Froelich)
(Senators Kinnoin, Solberg, Wanzek)

STATE MEAT INSPECTION PROGRAM

AN ACT to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to a state meat inspection program; to provide a penalty; to provide for a transfer; to provide a statement of legislative intent; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

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

1. "Adulterated" means a whole carcass, part of a carcass, or meat food product:
 - a. That bears or contains a poisonous or harmful substance that may render it injurious to health;
 - b. That bears or contains a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That bears or contains a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That contains a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That is wholly or partly the product of an animal that has died in a manner other than slaughter;
 - g. The container of which is wholly or partly composed of a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or

- j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better than or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, ratite, horses, equines, and other large domesticated animals, not including poultry.
3. "Commissioner" means the commissioner of agriculture.
4. "Container" includes a can, pot, tin, canvas, or other receptacle containing a meat food product.
5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal or processing meat products for the owner of the animal or of the meat products, if all meat products derived from the custom operation are returned to the owner of the animal or of the meat products.
6. "Intrastate commerce" means commerce within this state.
7. "Meat food product" means a product usable as human food and made wholly or in part from meat or a portion of an animal carcass. The term does not include any product that contains meat or other portions of the carcasses of animals in a relatively small proportion or which historically have not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
8. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

Inspectors - Appointments - Duties.

1. The commissioner shall appoint inspectors to examine and inspect meat food products prepared solely for intrastate commerce in a slaughtering, meat canning, salting, packing, or similar establishment. The inspections must take place at any time during which the slaughtering of animals or the preparation of food products is being conducted. Upon completing an inspection, the inspector shall mark, stamp, tag, or label the product "North Dakota inspected and passed" if it is unadulterated or as "North Dakota inspected and condemned" if the product is found to be adulterated.
2. The commissioner shall appoint inspectors to examine and inspect each slaughtering, meat canning, salting, packing, or similar establishment in which meat food products are prepared solely for intrastate commerce. The commissioner shall adopt rules of sanitation applicable to these establishments. If any facility does not meet the sanitary conditions required by the commissioner, the commissioner may not allow any meat food product from that facility to be labeled, marked, stamped, or tagged as "North Dakota inspected and passed".
3. Meat food products inspected and passed under this chapter may be sold at retail in this state.

4. Neither the commissioner, nor any inspector appointed by the commissioner, may undertake any activity that is duplicative of an activity performed by meat inspectors of the United States department of agriculture.

Access by inspectors - Penalty.

1. The commissioner and any authorized representative of the commissioner have access to:
 - a. Any place where food or any other product, the manufacture, sale, use, or transportation of which is restricted, regulated, or prohibited by a law of this state, is or may be manufactured, prepared, stored, sold, used, transported, offered for sale or transportation, or possessed with intent to use, sell, or transport;
 - b. Any place where an animal is pastured or stabled;
 - c. Any car or other carriage used to transport a meat food product or an animal;
 - d. Any place where food is or may be cooked, prepared, sold or kept for sale to or for the public or distributed as a part of the compensation of an employee or agent; and
 - e. Any place where a meat food product may be manufactured, sold, used, offered for sale or transportation, or possessed with intent to use, sell, or transport.
2. The commissioner and any authorized representative of the commissioner may inspect any container believed to hold food, a food ingredient, or some other product, the manufacture, use, sale, or transportation of which is restricted, regulated, or forbidden by state law, and may take samples from it for analysis.
3. It is a class A misdemeanor for any person to obstruct entry or inspection under this chapter or to fail, upon request, to assist in an inspection authorized by this chapter.

Marks and labels.

1. If a meat food product which is inspected and marked "North Dakota inspected and passed" is being placed or packed in a container, the person preparing the product shall attach to the container, under supervision of an inspector, a label indicating that the product has been "North Dakota inspected and passed". An inspection under this chapter is not complete until the product has been sealed or enclosed in the container, under the supervision of an inspector.
2. A meat food product inspected under this chapter and found not to be adulterated must bear, directly or on its container, a legible label or official mark as required by the commissioner.
3. The commissioner shall prescribe by rule the style and size of type to be used in labeling meat under this chapter and standards of identity, composition, and fill of container for meat food products inspected

under this chapter, but the standards must be consistent with those established under federal law.

False or misleading marks, labels, and containers. A person may not sell in intrastate commerce any meat food product subject to inspection under this chapter under a name, mark, or label which is false or misleading, or in a container of a misleading form or size. If the commissioner has reason to believe that a mark, label, or container is false or misleading, the commissioner may direct that its use be withheld unless the mark, label, or container is modified in a manner approved by the commissioner. If the person using or proposing to use the mark, label, or container does not accept the determination of the commissioner, the person may request a hearing. The commissioner may direct that the mark, label, or container not be used pending a hearing and final determination by the commissioner. A determination by the commissioner is conclusive unless the person adversely affected appeals to the district court within thirty days after receiving the notice of final determination.

Prohibitions. A person may not:

1. Slaughter an animal or prepare an article usable as human food at any establishment preparing articles solely for intrastate commerce, unless the person complies with this chapter;
2. Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce any article that is usable as human food and which is adulterated or misbranded or any article that has not been inspected and passed under this chapter; or
3. Alter an article that is usable as human food while the article is being transported in intrastate commerce or held for sale after transportation, if the alteration is intended to cause or has the effect of causing the article to be adulterated or misbranded.

Official marks and certificates - Required authorization. A person may not:

1. Cast, print, or otherwise make a device containing an official mark, simulation of an official mark, label bearing a mark or simulation, or form of official certificate or simulation, without authorization from the commissioner;
2. Forge an official device, mark, or certificate;
3. Use a real or simulated official device, mark, or certificate, or alter, detach, deface, or destroy an official device, mark, or certificate, without authorization from the commissioner;
4. Fail to use an official device, mark, or certificate if appropriate;
5. Knowingly possess, without promptly notifying the commissioner, a counterfeit, simulated, forged, or improperly altered official certificate, device, or label, or a whole carcass or part of a carcass bearing a counterfeit, simulated, forged, or improperly altered official mark;
6. Knowingly make a false statement in a certificate; or

7. Knowingly represent falsely that an article has been inspected and passed, or exempted, under this chapter.

Horse meat - Requirements. A person may not sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce whole carcasses or parts of carcasses of horses, mules, or other equines or meat food products derived from them, unless they are plainly and conspicuously marked, labeled, or otherwise identified to show the kinds of animals from which they were derived. The commissioner by rule may require that the preparation of whole equine carcasses, parts of equine carcasses, and equine meat food products take place in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or in which their carcasses, parts of their carcasses, or meat food products are prepared.

Bribery. A person may not give or receive anything of value to influence the performance of an inspector under this chapter.

Individual and custom processing.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. This chapter does not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.

Storing and handling conditions. The commissioner shall adopt rules regarding the manner in which all whole carcasses, parts of carcasses, and meat food products of animals usable as human food and subject to this chapter must be stored, handled, and transported.

Articles not intended as human food. The commissioner may not provide inspection under this chapter at an establishment for the slaughter of animals or the preparation of carcasses or parts or products of animals which are not intended for use as human food. Before these articles are offered for sale or transportation in intrastate commerce, they must be denatured or otherwise identified, as prescribed by rules of the commissioner, to deter their use for human food, unless they are naturally inedible by humans. A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts of carcasses, or meat food products of animals which are not

intended for use as human food, unless the articles are denatured or otherwise identified.

Records. The following persons shall keep records that fully and accurately disclose the transactions described:

1. A person in the business of slaughtering animals or preparing, freezing, packaging, or labeling animal carcasses, parts, or products of carcasses for use as human or animal food.
2. A person buying, selling, transporting, or storing animal carcasses or parts or products of animal carcasses.
3. A person rendering or buying, selling, or transporting dead, dying, disabled, or diseased animals or parts of the carcasses of animals that died other than by slaughter.

Records - Examination. Upon notice by the commissioner, any person subject to the recordkeeping requirements of this chapter shall give the commissioner and the United States department of agriculture access to their places of business at all reasonable times and an opportunity to examine the facilities, inventory, and records of the business, to copy business records, and to take reasonable samples of their inventory upon payment of the fair market value of the samples.

Records - Retention. Any person subject to the recordkeeping requirements of this chapter shall maintain the records for the period prescribed by the commissioner.

Registration of business. A person may not engage in intrastate business as a meat broker, renderer, or animal food manufacturer; a wholesaler of animal carcasses, carcass parts or products of carcasses, intended for human food or other purposes; a public warehouse operator storing carcasses or parts of carcasses of animals in or for intrastate commerce; or a buyer, seller, or transporter of dead, dying, disabled, or diseased animals, or parts of the carcasses of animals that died other than by slaughter, unless the person first provides the commissioner with the person's name, the address of each place of business under which the person conducts business, and all trade names under which, the person conducts business.

Dead, dying, disabled, or diseased animals - Rules. The commissioner shall adopt rules to ensure that dead, dying, disabled, or diseased animals are not used as human food.

Cooperation with federal government. The commissioner shall cooperate with the United States department of agriculture to develop and administer the state meat inspection program provided for under this chapter and to ensure that its requirements are at least equal to those imposed by federal law. The commissioner may accept, from the United States department of agriculture, advice and assistance in planning and otherwise developing the state meat inspection program; technical and laboratory assistance and training, including necessary curricular and instructional materials and equipment; and financial and other assistance for the administration of the program.

Refusal or withdrawal of inspection.

1. For the length of time the commissioner considers necessary to carry out the purposes of this chapter, the commissioner may refuse to provide, or

withdraw, inspection services from an establishment if after a hearing the commissioner determines that the recipient or potential recipient is unfit to engage in any business requiring inspection under this chapter because the recipient, potential recipient, or anyone responsibly connected with the recipient or potential recipient has been convicted of:

- a. An offense determined by the commissioner to have a direct bearing on the person's ability to serve the public in a business requiring inspection under this chapter, or the commissioner determines the person is not sufficiently rehabilitated under section 12.1-33-02.1;
 - b. More than one violation of a law based on the acquisition, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food; or
 - c. Fraud in connection with transactions involving food.
2. For the purpose of this section anyone responsibly connected with a business means an individual who is a partner, officer, director, holder, or owner of ten percent or more of its voting stock or an employee in a managerial or executive capacity.

Detention of animals or products. If an inspector finds a whole carcass, part of a carcass, or meat food product, a product exempted from the definition of a meat food product, or a dead, dying, disabled, or diseased animal on premises where it is held for purposes of, during, or after distribution in intrastate commerce, and the inspector reasonably believes that the article is adulterated or misbranded and is usable as human food, or that it has not been inspected, in violation of this chapter or federal law, or that the article or animal has been or is intended to be distributed in violation of this chapter or federal law, the inspector may detain the article for up to twenty days pending a hearing or notification of federal authorities having jurisdiction over the article or animal. The article may not be moved by any person from the place at which it was located when detained, until released by the commissioner. The commissioner may require all official marks to be removed from the article or animal before it is released unless the commissioner is satisfied that the article or animal is eligible to retain the official marks.

Seizure and condemnation. The commissioner may initiate action to seize and condemn a whole carcass, part of a carcass, or meat food product, or a dead, dying, disabled, or diseased animal that is being transported in intrastate commerce, or is held for sale in this state after transportation in intrastate commerce if:

1. The article is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
2. The article is usable as human food and is adulterated or misbranded; or
3. The article is in any other way violative of this chapter.

Sale of condemned items. If an article or animal is condemned, it must be disposed of by destruction or sale, as directed by a court. If it is sold, the proceeds must be paid to the state, less the court costs, fees, storage, and reasonable expenses, but the article or animal must not be sold contrary to this chapter or federal law. If a bond is delivered conditioned that the article or animal not be sold or otherwise

disposed of contrary to this chapter or federal law, the court may direct that the article or animal be delivered to its owner subject to supervision by the commissioner.

Types of proceedings - Award of costs. If a decree of condemnation is entered against an article or animal and it is released under bond or destroyed, a court may award costs, fees, storage, and other reasonable expenses against any person intervening as a claimant of the article or animal. Either party to a proceeding may demand trial by jury of any issue of fact joined in the case, and all proceedings must be in the name of the state. Nothing in this section changes the authority for condemnation or seizure otherwise conferred by law.

Powers of commissioner. For the purposes of this chapter, the commissioner may:

1. Gather and compile information concerning and investigate the organization, business, conduct, practices, and management of a person in intrastate commerce and the person's relation to other persons.
2. Require that a person engaged in intrastate commerce file with the commissioner, in the form and manner prescribed by the commissioner, annual and special reports or written answers to specific questions, giving the commissioner the information the commissioner requires about the organization, business, conduct, practices, management, and relation to other persons, of the person filing the reports or answers.
3. Examine and copy documentary evidence of a person being investigated or being proceeded against. A person may not refuse to submit the commissioner, for inspection and copying, any documentary evidence of a person subject to this chapter in the person's possession or control.
4. A person required by this chapter to file an annual or special report may not fail to do so within the time fixed by the commissioner, and continue the failure for thirty days after notice of failure to file.
5. Adopt rules to implement this chapter, including establishing inspection fees for providing inspection services under this chapter.

Interstate shipment. Meat and meat products inspected under this chapter may be shipped in interstate commerce when federal law permits state inspected meat and meat products to be marketed interstate.

General penalty. Violation of this chapter or a rule adopted under this chapter is a class A misdemeanor. The commissioner is not required to report for prosecution or for the institution of injunctive proceedings a minor violation of this Act if the commissioner believes that the public interest will be adequately served by a suitable written warning.

SECTION 2. APPROPRIATION. There is hereby appropriated from special funds derived from federal funds and other income, the sum of \$454,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of implementing and operating the state meat inspection program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 3. TRANSFER. The Bank of North Dakota shall transfer the sum of \$250,000 from uncommitted funds of the agricultural partnership in assisting

community expansion fund to the agriculture department's operating fund for the purpose of implementing and operating the state meat inspection program for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 4. ESTABLISHMENT OF STATE MEAT INSPECTION RULES - TEMPORARY COMMITTEE. The agriculture commissioner shall appoint a committee to assist in establishing administrative rules for the state meat inspection program which meet the requirements of the United States department of agriculture for the biennium beginning July 1, 1999, and ending June 30, 2001. The committee consists of the agriculture commissioner or the commissioner's designee; the vice president of agricultural affairs at North Dakota state university; the state veterinarian or the veterinarian's designee; and four individuals appointed by the agriculture commissioner, one of whom represents producers, one of whom represents processors, and two consumer members. The agriculture commissioner or the commissioner's designee is chairman of the committee. Each appointed member is entitled to receive sixty-two dollars and fifty cents per day as compensation for time actually spent devoted to the duties as provided in this section and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of the office.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that the agriculture commissioner complete the promulgation of rules for the state meat inspection program and begin operating the program by July 1, 2000; however, if it is not possible to begin by July 1, 2000, the commissioner may begin the program at a later date but not later than January 1, 2001.

Approved April 14, 1999
Filed April 15, 1999

CHAPTER 321

HOUSE BILL NO. 1337

(Representatives Nicholas, Meyer, Belter)
(Senators Freborg, Tomac, Wanzek)

FARMED ELK

AN ACT to create and enact a new chapter to title 36 of the North Dakota Century Code, relating to farmed elk; to amend and reenact section 19-02.1-21, subsection 3 of section 36-01-00.1, section 36-04-02, subsection 2 of section 36-05-01, subsection 2 of section 36-05.1-01, subsection 1 of section 38-11.1-03, and subsection 1 of section 38-18-05 of the North Dakota Century Code, relating to the inclusion of farmed elk in other provisions regarding livestock; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

19-02.1-21. Inspections - Examinations. The department has free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of inspecting such factory, warehouse, establishment, or vehicle to determine if this chapter is being violated and to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample.

The department shall make or cause to be made examinations of samples secured under this section to determine whether or not this chapter is being violated.

Inspections of slaughterhouses, meatpacking, and meat processing plants where cattle, swine, sheep, goats, farmed elk, horses, or other equines are slaughtered for human food or where the carcass or the parts thereof, meat, or meat food products are salted, canned, packed, smoked, cured, rendered, or otherwise processed or prepared for human food, may not be performed under this chapter if the slaughterhouses, meatpacking, or meat processing plants are inspected under the North Dakota Meat Inspection Act, or the Federal Meat Inspection Act, as amended [34 Stat. 1260-65; 21 U.S.C. 71-91].

SECTION 2. If House Bill No. 1276 does not become effective, a new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

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

1. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.

3. "Farmed elk" means mammals of the elk family (cervus elaphus), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; or
 - b. Raised for breeding, exhibition or harvest.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

Farmed elk - Rules - Data base. The board may adopt rules relating to the raising of farmed elk, including matters concerning the health, safety, confinement, and identification of farmed elk. Any rules relating to nontraditional livestock and adopted by the board before August 1, 1999, are, if applicable to farmed elk, deemed to apply to farmed elk until otherwise modified by the board. The board shall maintain a data base regarding farmed elk.

Farmed elk advisory committee. The commissioner may appoint a farmed elk advisory committee to provide advice to the commissioner regarding farmed elk.

Farmed elk development program. The commissioner may establish a farmed elk development program to support applied research and provide demonstrations, financing, marketing, promotion, breed development and registration, and other services related to the raising of farmed elk. The commissioner shall include information regarding farmed elk in reports on agriculture in this state.

Farmed elk - Confinement - Rules. Farmed elk must be confined in a manner designed to prevent escape. Unless otherwise required by rule, fencing for farmed elk must be at least eighty-four inches [213.36 centimeters] in height. If any farmed elk escape, their owner shall report the escape to the board within one business day of the discovery and shall notify the board upon recapture. The owner is liable for the expenses incurred by another person in capturing, caring for, and returning farmed elk that have escaped, provided the other person notifies the owner as soon as practicable after discovering the escape.

Farmed elk - Agricultural pursuit. Farmed elk are livestock, and the products of farmed elk are farm products for purposes of financial transactions and collateral. The raising of farmed elk is agricultural production and an agricultural pursuit.

Farmed elk - Sales of meat products. Unless otherwise provided, a person selling or buying farmed elk as livestock, for human consumption or for slaughter, must comply with this title and all applicable rules.

Farmed elk - Identification. The owner of farmed elk shall identify each animal by a means of identification approved by the board.

Farmed elk - Inspection. The commissioner and the board may inspect farmed elk and all records related to the farmed elk.

Enforcement orders - Administrative hearing - Penalty. The board may order any elk brought into this state in violation of rules adopted by the board to be returned to the state of origin or to be slaughtered. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of rules adopted by the board, the board may assess that person a civil penalty in an amount up to

two thousand five hundred dollars. Any person who knowingly violates this chapter or any rule of the board is guilty of a class A misdemeanor.

Tuberculosis - Brucellosis - Compensation of owner. If the board determines an elk to be infected with tuberculosis or brucellosis, its owner is entitled to payment as specified in this section. If an elk herd is adjudged by the board to be so seriously infected with tuberculosis or brucellosis as to warrant disposal of the entire herd, its owner is entitled to indemnity payments for the herd whether reactors, suspects, or exposed, in accordance with the limits set forth in this section. The board may adopt rules governing the payment of compensation under this section of not to exceed twenty-five dollars for each grade elk nor fifty dollars for each registered purebred elk.

SECTION 3. If House Bill No. 1276 becomes effective, a new chapter to title 36 of the North Dakota Century Code is created and enacted as follows:

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

1. "Board" means the state board of animal health.
2. "Commissioner" means the commissioner of agriculture.
3. "Farmed elk" means mammals of the elk family (cervus elaphus), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; or
 - b. Raised for breeding, exhibition, or harvest.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

Farmed elk - Rules - Data base. The board may adopt rules relating to the raising of farmed elk, including matters concerning the health, safety, confinement, and identification of farmed elk. Any rules relating to nontraditional livestock and adopted by the board before August 1, 1999, are, if applicable to farmed elk, deemed to apply to farmed elk until otherwise modified by the board. The board shall maintain a data base regarding farmed elk.

Farmed elk advisory committee. The commissioner may appoint a farmed elk advisory committee to provide advice to the commissioner regarding farmed elk.

Farmed elk development program. The commissioner may establish a farmed elk development program to support applied research and provide demonstrations, financing, marketing, promotion, breed development and registration, and other services related to the raising of farmed elk. The commissioner shall include information regarding farmed elk in reports on agriculture in this state.

Farmed elk - Confinement - Rules. Farmed elk must be confined in a manner designed to prevent escape. Unless otherwise required by rule, fencing for farmed elk must be at least eighty-four inches [213.36 centimeters] in height. If any farmed elk escape, their owner shall report the escape to the board within one business day of the discovery and shall notify the board upon recapture. The owner is liable for the expenses incurred by another person in capturing, caring for, and returning

farmed elk that have escaped, provided the other person notifies the owner as soon as practicable after discovering the escape.

Farmed elk - Agricultural pursuit. Farmed elk are livestock, and the products of farmed elk are farm products for purposes of financial transactions and collateral. The raising of farmed elk is agricultural production and an agricultural pursuit.

Farmed elk - Sales of meat products. Unless otherwise provided, a person selling or buying farmed elk as livestock, for human consumption or for slaughter, must comply with this title and all applicable rules.

Farmed elk - Identification. The owner of farmed elk shall identify each animal by a means of identification approved by the board.

Farmed elk - Inspection. The commissioner and the board may inspect farmed elk and all records related to the farmed elk.

Enforcement orders - Administrative hearing - Penalty. The board may order any elk brought into this state in violation of rules adopted by the board to be returned to the state of origin or to be slaughtered. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of rules adopted by the board, the board may assess that person a civil penalty in an amount up to five thousand dollars. Any person who knowingly violates this chapter or any rule of the board is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Subsection 3 of section 36-01-00.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, farmed elk, llama, alpaca, or swine.

SECTION 5. AMENDMENT. Section 36-04-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-04-02. Restrictions on application of provisions of chapter. The provisions of this chapter do not apply to:

1. Farmers who or farm associations which buy and sell farmed elk, livestock, poultry, or wool among themselves as producers.
2. Farmers who or farm associations which purchase farmed elk, livestock, or wool to complete a load of their own farmed elk, livestock, or wool for shipment to market if the amount so purchased does not exceed twenty-five percent of a truckload.
3. Cooperative farmed elk, livestock, or wool marketing associations of producers of farmed elk, livestock, or wool in their dealings with their members.
4. Livestock including farmed elk, purchased by local butchers for slaughter or processing in their business for local home consumption.

²³⁷ **SECTION 6. AMENDMENT.** Subsection 2 of section 36-05-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.

SECTION 7. AMENDMENT. Subsection 2 of section 36-05.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.

SECTION 8. AMENDMENT. Subsection 1 of section 38-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.

SECTION 9. AMENDMENT. Subsection 1 of section 38-18-05 of the North Dakota Century Code is amended and reenacted as follows:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not ~~such~~ the animals are to be sold commercially.

Approved March 9, 1999
Filed March 9, 1999

²³⁷ Section 36-05-01 was also amended by section 11 of House Bill No. 1276, chapter 317.

MILITARY

CHAPTER 322

SENATE BILL NO. 2131

(Government and Veterans Affairs Committee)

(At the request of the Adjutant General)

UNIFORM CODE OF MILITARY JUSTICE APPLICATION

AN ACT to amend and reenact sections 37-01-03, 37-09-01, 37-09-02, 37-09-04, 37-09-05, 37-09-06, 37-09-08, 37-09-09, 37-09-12, and 37-09-14 of the North Dakota Century Code, relating to application of the uniform code of military justice to the North Dakota national guard and military courts within the North Dakota national guard; and to repeal sections 37-09-03 and 37-09-13 of the North Dakota Century Code, relating to military courts of inquiry and court-martial sentences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty. The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, 1984 (1998 edition), now ~~or hereafter~~ in effect, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in his discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

SECTION 2. AMENDMENT. Section 37-09-01 of the North Dakota Century Code is amended and reenacted as follows:

37-09-01. Military courts. The military courts of this state for the national guard are:

1. ~~Courts of inquiry.~~
2. General courts-martial.
3. 2. Special courts-martial.
4. 3. Summary courts-martial.

SECTION 3. AMENDMENT. Section 37-09-02 of the North Dakota Century Code is amended and reenacted as follows:

37-09-02. Powers and procedure of military courts. The military courts of this state must be constituted the same, have cognizance of the same subjects, and shall possess the same powers, except as to punishment, as similar courts provided for by the laws and regulations governing the army of the United States. The proceedings of ~~courts of inquiry and courts-martial~~ of the national guard must follow the forms and modes of procedure prescribed ~~for such similar courts~~ in the Manual for Courts-Martial, United States, 1984 (1998 edition).

SECTION 4. AMENDMENT. Section 37-09-04 of the North Dakota Century Code is amended and reenacted as follows:

37-09-04. General courts-martial - Convening - Powers. A general court-martial may be convened by order of the governor or the adjutant general. Such court may sentence any member to:

1. ~~Impose fines~~ A fine not exceeding ~~two~~ five hundred dollars ~~upon the accused person~~ for a single offense;
2. ~~Sentence an accused person to forfeiture~~ Forfeiture of pay and allowances of not more than five hundred dollars for a single offense;
3. ~~Reprimand an accused person~~ A reprimand;
4. ~~Dismiss~~ Dismissal or ~~dishonorably bad conduct discharge, or dishonorable~~ discharge an accused person from the service; or
5. ~~Reduce a noncommissioned officer~~ Reduction of an enlisted member to the ranks, and it may combine any ~~two or more of such punishments~~ in any sentence imposed by it. any lower rank;
6. Confinement of not more than one hundred eighty days; or
7. Any combination of these punishments.

SECTION 5. AMENDMENT. Section 37-09-05 of the North Dakota Century Code is amended and reenacted as follows:

37-09-05. Special courts-martial - Appointment - Jurisdiction - Punishment. The commanding officer, with a rank of at least colonel (O-6), of each garrison, fort, post, camp, or other place, or of any brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for ~~his~~ the officer's command. A special court-martial may be appointed in any case by a superior authority when it is deemed desirable by the ~~latter~~ superior authority. A special court-martial may try any person, except a commissioned officer, subject to the military law, for any crime or offense made punishable by the military laws of the

United States, and has the same powers of punishment as a general court-martial except that fines imposed by a special court-martial may not exceed ~~one~~ three hundred dollars and a sentence of confinement may not exceed one hundred days. A bad conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel was detailed to represent the accused, and a military judge was detailed to the trial.

SECTION 6. AMENDMENT. Section 37-09-06 of the North Dakota Century Code is amended and reenacted as follows:

37-09-06. Summary courts-martial - Appointment - Powers - Proceedings.

The commanding officer, with a rank of at least colonel (0-6), of each garrison, fort, post, or other place, or of any regiment, corps, detached battalion, company, or other detachment, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted ~~men~~ members of such place or command for breaches of discipline and violations of laws governing such organization. Such court, when satisfied of the guilt of a soldier, may:

1. Impose a fine ~~upon him~~ in an amount not exceeding ~~twenty-five~~ two hundred dollars for any single offense;
2. Sentence ~~him~~, if he is a ~~noncommissioned officer~~ an enlisted member, to reduction to the ranks; ~~or~~
3. Sentence ~~him~~ an enlisted member to forfeiture of pay and allowances not to exceed two hundred dollars for a single offense; or
4. Any combination of these punishments.

The proceedings of such court must be informal, and the minutes of the court must be the same as those prescribed for summary courts of the United States army.

SECTION 7. AMENDMENT. Section 37-09-08 of the North Dakota Century Code is amended and reenacted as follows:

37-09-08. Commitment to prison or jail pending trial - Bail allowed.

Whenever an accused person has been arrested for failure to appear before a court-martial for trial as provided in this chapter, the president of the court-martial or the summary court officer to whom the charges have been referred for trial may issue a warrant to a civil officer for the commitment of such person to prison or jail pending trial. In all such cases, the accused must be admitted to bail, the amount of bail fixed, and the surety or sureties thereon approved by the president of the court-martial or by the summary court officer issuing the warrant. In default of bail, such person must be confined pending trial. ~~No person, however, may be kept in prison or jail pending trial for more than five days.~~

SECTION 8. AMENDMENT. Section 37-09-09 of the North Dakota Century Code is amended and reenacted as follows:

37-09-09. Powers of president of ~~court of inquiry~~, court-martial; and summary court officer. A president ~~of a court of inquiry~~, of a court-martial; and a summary court officer may:

1. Issue subpoenas.

2. Enforce the attendance of witnesses and the production of books and papers.
3. ~~Sentence for a refusal to be sworn or to answer as is provided in civil courts.~~

SECTION 9. AMENDMENT. Section 37-09-12 of the North Dakota Century Code is amended and reenacted as follows:

37-09-12. Sentence imposing confinement - Execution. Any portion of a sentence imposed by a military court that prescribes confinement must be executed in such ~~county jail~~ facility as the reviewing authority may direct. The expenses of such confinement must be borne by the state of North Dakota. A commitment in writing must be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but ~~where~~ if the confinement is the result of the confirmed action of the reviewing authority, an official copy of the order publishing the sentence of the court must be furnished to the sheriff or jailer.

SECTION 10. AMENDMENT. Section 37-09-14 of the North Dakota Century Code is amended and reenacted as follows:

37-09-14. Sentence of court-martial to be approved. ~~No~~ A sentence of any court-martial ~~becomes~~ is not effective until approved by the convening authority. ~~No~~ A sentence of dismissal from the service or dishonorable discharge imposed by a court-martial may not be executed until approved by the governor.

SECTION 11. REPEAL. Sections 37-09-03 and 37-09-13 of the North Dakota Century Code are repealed.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 323

HOUSE BILL NO. 1080

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

NATIONAL GUARD ORDERING OUT AUTHORITY

AN ACT to amend and reenact section 37-01-04 of the North Dakota Century Code, relating to the power of the governor to order out the national guard; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

37-01-04. ~~Governor may~~ Governor's authority to order out national guard in case of insurrection or riot - Reserve militia ordered out. In case of insurrection, invasion, tumult, riot, ~~or~~ breach of the peace, or imminent danger thereof, to provide a presence at state ceremonial events, or to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, the governor may order into the active service of this state any part of the national guard that ~~he~~ the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as ~~he~~ the governor may deem necessary.

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

Approved March 22, 1999
Filed March 23, 1999

CHAPTER 324**SENATE BILL NO. 2084**

(Education Committee)

(At the request of the Adjutant General)

NATIONAL GUARD TUITION WAIVERS

AN ACT to amend and reenact section 37-07.1-03 of the North Dakota Century Code, relating to tuition waivers granted to national guard members by state-controlled schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-07.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-07.1-03. Tuition waiver - Terms. ~~Any~~ A qualifying member of the national guard who enrolls in any state-controlled school ~~shall~~, subject to ~~national guard~~ national guard rules ~~promulgated~~ adopted by the adjutant general, is entitled to receive a twenty-five percent waiver of the tuition charged by from the state-controlled school, conditioned on the adjutant general having sufficient appropriations for tuition reimbursement under section 37-07.1-06.2. The tuition waiver is valid only so long as the member of the national guard maintains satisfactory performance with the guard, meets the qualification requirements of rules ~~promulgated~~ adopted by the adjutant general, and pursues a course of study in a manner ~~which~~ that satisfies the normal requirements of the school.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 325

SENATE BILL NO. 2145

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

DISASTER EMERGENCY COMPENSATION CLAIMS

AN ACT to amend and reenact section 37-17.1-12 of the North Dakota Century Code, relating to disaster emergency claims for compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-12. Compensation - Entitlement - Time - Amount.

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered ~~his~~ that person's services or property without compensation.
2. ~~No personal~~ Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property must be only if the property was commandeered or otherwise used in management of a disaster or emergency declared by the governor and its use or destruction was ordered by the governor.
4. Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.

5. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 326

SENATE BILL NO. 2083

(Government and Veterans Affairs Committee)
(At the request of the Division of Emergency Management)

EMERGENCY MANAGEMENT LOAN REPAYMENTS

AN ACT to amend and reenact section 37-17.1-23 of the North Dakota Century Code, relating to use of federal emergency management agency administrative fees for payments of loans from the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-17.1-23. Disaster or emergency recovery funding - Loan authorization.

When approved by the emergency commission, the division of emergency management is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of emergency management shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:

1. Approval to make an application for a loan from the Bank of North Dakota;
2. Approval for additional personnel required to perform the anticipated recovery activities; and
3. Authority to spend additional state and federal funds for the recovery program.

If the request is acceptable, the emergency commission shall approve the request and issue a notice of their action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. ~~The emergency commission is authorized to repay the loan utilizing federal recovery administrative reimbursements to the state under Public Law 93-288, as amended, and any other moneys remaining in the contingency fund.~~ If at the end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

Approved March 3, 1999
Filed March 4, 1999

MINING AND GAS AND OIL PRODUCTION

CHAPTER 327

HOUSE BILL NO. 1085

(Representative Wald)

(At the request of the Industrial Commission)

OIL AND GAS LAW VIOLATION PENALTIES

AN ACT to amend and reenact section 38-08.1-07 of the North Dakota Century Code, relating to penalties for violation of oil and gas laws, rules, and orders; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08.1-07 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-07. ~~Failure to comply with chapter - Penalty~~ Civil and criminal penalties. Any person violating any of the provisions of this chapter is guilty of a ~~class B misdemeanor.~~

1. A person who violates any provision of this chapter or commission rule or order is subject to a civil penalty imposed by the commission not to exceed one thousand dollars for each offense, and each day's violation is a separate offense. A penalty imposed under this section, if not paid, may be recovered by the commission in the district court of the county in which the defendant resides, or in which any defendant resides if there is more than one defendant, or in the district court of any county in which the violation occurred. Payment of the penalty does not legalize the activity for which the penalty was imposed, or relieve the person upon whom the penalty was imposed from liability to any other person for damage caused by the violation.
2. Notwithstanding this section, a person who willfully violates any provision of this chapter or a commission rule or order is guilty of a class C felony.

Approved March 8, 1999
Filed March 9, 1999

CHAPTER 328

SENATE BILL NO. 2092

(Natural Resources Committee)

(At the request of the Industrial Commission)

OIL AND GAS DRILLING OPERATIONS NOTICES

AN ACT to amend and reenact section 38-11.1-05 of the North Dakota Century Code, relating to notice of oil and gas drilling operations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-11.1-05. Notice of drilling operations. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice of the drilling operations contemplated at least twenty days prior to the commencement of the operations, unless waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time prior to commencement of drilling operations. This notice must be given to the record surface owner at that person's address as shown by the records of the county register of deeds at the time the notice is given. This notice must sufficiently disclose the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property. Included with this notice must be a form prepared by the ~~state geologist~~ director of the oil and gas division advising the surface owner of the surface owner's rights and options under the chapter, including the right to request the state department of health to inspect and monitor the well site for the presence of hydrogen sulfide. If a mineral developer fails to give notice as provided under this section, the surface owner may seek any appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 329**HOUSE BILL NO. 1086**

(Natural Resources Committee)

(At the request of the Public Service Commission)

**SURFACE COAL MINING PERMIT APPLICATION
CONFERENCES**

AN ACT to amend and reenact subdivision f of subsection 3 of section 38-14.1-30 of the North Dakota Century Code, relating to persons presiding at surface coal mining permit application conferences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision f of subsection 3 of section 38-14.1-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- f. No person; ~~except a commissioner,~~ who presides at ~~any~~ an informal conference under section 38-14.1-19 in reference to a permit application may preside at a formal administrative hearing under this section or participate in making the final administrative decision pursuant to chapter 28-32.

Approved March 8, 1999

Filed March 8, 1999

MOTOR VEHICLES

CHAPTER 330

SENATE BILL NO. 2161

(Transportation Committee)

(At the request of the Department of Transportation)

VEHICLE DEFINITION, REGISTRATION, AND DAMAGE DISCLOSURE

AN ACT to create and enact a new subsection to section 39-01-01 of the North Dakota Century Code, relating to the definition of recreational vehicle; and to amend and reenact subsection 67 of section 39-01-01, subsection 2 of section 39-04-36, section 39-05-17.2, subparagraph a of paragraph 3 of subdivision b of subsection 2 of section 39-06-14, sections 39-18-01, and 39-29.1-08 of the North Dakota Century Code, relating to vehicle registration fee credits, motor vehicle body damage disclosure, low-speed vehicles, and correction of statutory references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Recreational vehicle" means any motorcycle not qualified for registration, all-terrain vehicle, snowmobile, vessel, or personal watercraft.

SECTION 2. AMENDMENT. Subsection 67 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

~~67.~~ 68. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a truck or truck tractor that some part of its own weight and that of its own load rests upon or is carried by a truck or truck tractor, except that it does not include a "housetrailer" or "mobile home" as defined in subsection ~~82~~ 83.

SECTION 3. AMENDMENT. Subsection 2 of section 39-04-36 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon applying for the transfer of the registration and paying a five dollar fee, a person who transfers or assigns to another person the ownership of a registered vehicle may receive credit for the unused portion of the fees paid for the transferred vehicle. The department may establish procedures that permit the transferor to assign the credit to the transferee if the transferor is the spouse, a sibling, or a lineal ancestor or descendant of the transferee. One-twelfth of the annual fee must be credited for each month of the registration period remaining after the month in which the transfer is made. The credit may not extend beyond the original expiration of the registration. Except as provided in section

39-04-44, the credit must be applied to the registration fees for a replacement vehicle. The transferor shall apply for the transfer of registration within thirty days of the purchase of the replacement vehicle.

²³⁸ **SECTION 4. AMENDMENT.** Section 39-05-17.2 of the North Dakota Century Code is amended and reenacted as follows:

39-05-17.2. Body damage disclosure - Rules - When required - Penalty.

1. The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department must refuse to transfer the title without the required damage disclosure statement.
2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on ~~all current year models~~ of motor vehicles of a model year which have been released in the current calendar year and those models manufactured motor vehicles of a model year which were released in the seven calendar years before the current model calendar year. When a motor vehicle has been subject to this disclosure requirement and ~~more than eight years have elapsed since the date of manufacture~~ a motor vehicle of a model year has not been released in the current calendar year or the seven calendar years before the current calendar year, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.
3. As used in this section, "motor vehicle damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of five thousand dollars or forty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.
4. A person repairing, replacing parts, or performing body work on a motor vehicle ~~that is less than eight years old~~ of a model year which was released in the current calendar year or the seven calendar years before the current calendar year shall provide a statement to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, the person repairing, replacing parts, or performing body

²³⁸ Section 39-05-17.2 was also amended by section 1 of Senate Bill No. 2321, chapter 338.

work on the motor vehicle ~~that is less than eight years old~~ of a model year which has been released in the current calendar year or the seven calendar years before the current calendar year shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.

5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.
6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

²³⁹ **SECTION 5. AMENDMENT.** Subparagraph a of paragraph 3 of subdivision b of subsection 2 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

- (a) A double trailer, triple trailer, or, if under eighteen years of age, a truck tractor as defined in ~~subsection 85~~ of section 39-01-01.

SECTION 6. AMENDMENT. Section 39-18-01 of the North Dakota Century Code is amended and reenacted as follows:

39-18-01. Mobile home dealer's license - Fees - Dealer's plates. No person, partnership, corporation, or limited liability company may engage in the business of buying, selling, or exchanging of mobile homes or travel trailers, or advertise or hold oneself or itself out to the public as being in the business of buying, selling, or exchanging of mobile homes or travel trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license must be made to the department on such forms as the department prescribes and furnishes, and the application must be accompanied by an annual fee of thirty-five dollars for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license.

A mobile home dealer's license must be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home dealers.

In addition, the dealer shall maintain that person's business records in one central location.

²³⁹ Section 39-06-14 was also amended by section 2 of Senate Bill No. 2233, chapter 339.

Upon the payment of the fee of ten dollars for each additional plate, the department shall register and issue dealer's license plates for use on any mobile homes owned by the licensed dealer, and the mobile homes bearing the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by the dealer, and the dealer's agents and servants, during the year of the registration. A dealer's license plates expire on December thirty-first of each year.

The term "mobile home" as used in this chapter includes and has the same meaning as "housetrailer", and both terms have the meaning prescribed in ~~subsection 82 of~~ section 39-01-01. The term "travel trailer" as used in this chapter has the meaning as prescribed in section 39-01-01.

Any mobile home dealer licensed under the provisions of this chapter may sell house cars without being licensed under the provisions of chapter 39-22. A mobile home dealer plate displayed on a house car must be displayed on the rear of the vehicle.

²⁴⁰ **SECTION 7. AMENDMENT.** Section 39-29.1-08 of the North Dakota Century Code as created by House Bill No. 1216, as approved by the fifty-sixth legislative assembly, is amended and reenacted as follows:

39-29.1-08. Equipment. A low-speed vehicle must be equipped with head lamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, ~~four-wheel hydraulic assist~~ brakes, a parking brake, a windshield, a vehicle identification number, a safety belt installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rear view mirror.

Approved April 14, 1999
Filed April 14, 1999

²⁴⁰ Section 39-29.1-08 was created by section 1 of House Bill No. 1216, chapter 361.

CHAPTER 331

SENATE BILL NO. 2159

(Transportation Committee)

(At the request of the Department of Transportation)

REST AREA VENDING MACHINE PERMITS

AN ACT to create and enact a new section to title 39 of the North Dakota Century Code, relating to rest area vending machine permits from the department of transportation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Permits for vending machines at rest areas. A vending machine that allows access to a tobacco product may not be placed or remain upon a rest area, and any other vending machine may not be placed or remain upon a rest area under the supervision of the director without a permit from the director. The director shall charge a fee for the issuance of a vending machine permit. The amount of the permit fee must relate to the department's actual cost of administration, annual review, and enforcement of the permit process, but may not exceed twenty-five dollars annually. The permit process may not be affected by the content of a publication. The director shall require permittees to comply with appropriate indemnification, insurance, and other risk management provisions of the permit. Vending machines must be secured in a manner that prevents tipping and moving, deters theft, and leaves state property undamaged. Plexiglass, safety glass, or other shatter resistant materials must be employed in windows or displays. All vending machines must be sufficiently enclosed to prevent the distributed product from inadvertently being removed or blown from the machine or weathered by the elements. Stolen or damaged vending machines do not result in liability to the department and must be repaired, restored, or replaced within thirty calendar days. All cash boxes and accesses to cash boxes must be metal and securely locked in place. All vending machines must be placed in a well-lighted area visible from the rest area roadway. All vending machines must be placed on a route allowing parallel access by motorized or standard wheelchairs, with at least sixty-six inches [1676.400 millimeters] of clear width. A vending machine may not have a component or function used by the public which requires more than five pounds [2.268 kilograms] of force to be applied. The height of controls, doors, or access points necessary for use by the public may not exceed sixty inches [1524 millimeters]. The director may determine the maximum number of vending machine placements at a given rest area. Priority must be given to vending machines placed pursuant to the Randolph Sheppard Act [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], as administered by the vocational rehabilitation division of the department of human services under section 50-06.1-13. When, after allowing for the placement of vending machines pursuant to the Randolph Sheppard Act, [Pub. L. 74-732; 49 Stat. 1559; 20 U.S.C. 107], the director determines that the number of permit applications for a particular rest area would exceed the remaining available space or would prevent compliance with this section or other law, the director shall grant permits by means of a lottery, with permits allocated pro rata according to the number of applications for each type. The permittee is solely responsible to ensure that any trash, wrapping, boxes, or debris, generated when stocking or servicing vending machines is not left on or at the rest area. The permittee is solely responsible for all installation, maintenance, replacement, inspection, access area cleaning, and stocking of vending machines. Vandalism and graffiti on vending machines must be repaired or

removed within fourteen days of written notice by the director. The permittee must inspect and stock vending machines as needed, but at least monthly, to provide adequate service to the public. Vending machines removed for repair or for other reasons must be restored or replaced by the permittee within thirty days. Vending machines in violation of this section or any other applicable law may be removed by the director fourteen days after notice of violation is provided and without liability to the director. Vending machines judged by the director to pose a risk to safety may be removed immediately without liability to the director and without prior notice to the permittee. The director shall retain any removed vending machines for thirty days to allow retrieval by the permittee, after compensation to the director for removal costs. The director may dispose of or sell machines not retrieved within thirty days of removal, but removal costs must be satisfied only to the extent of proceeds received by the director. The director has a cause of action to recover any deficiency, attorneys' fees, and litigation expenses. The director, upon the determination that a rest area must be closed for a period of greater than thirty days, may order the permittee, at the permittee's expense, to remove all vending machines in a manner that does not damage state property, or remove all product and money and place upon the vending machine a prominent notice that all product and money have been removed. Should the director determine that removal of vending machines is necessary to conduct repairs, construction, surveys, or other duties of the department, the permittee, at the permittee's expense, shall remove all vending machines in a manner that does not damage state property, upon fourteen days' notice. The current address and phone number where customer service or business is conducted by the permittee must be legibly and prominently posted upon the vending machine. The director shall cancel the permit should the permittee remove vending machines, except as provided in this section. The cost of any removal must be borne by the permittee. The permittee, at the permittee's own expense, must restore the site the machine formerly occupied to the satisfaction of the director. For purposes of this section, "vending machine" means any device that allows access to a newspaper, magazine, beverage, concession, or other item for public consumption or use. For purposes of this section, "permittee" means any person or organization, including any corporation, partnership, firm, or any other legal entity capable of owning property and transacting business, which has applied for a permit under this chapter. For purposes of this section, "notice" consists of a written communication and must be deemed to have occurred within seventy-two hours of mailing, if mailed within North Dakota, or one hundred twenty hours of mailing, if mailed outside North Dakota. "Notice" to a vendor of the condition of a vending machine also occurs if a period of time greater than the required inspection interval for the vending machines has passed.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 332**SENATE BILL NO. 2077**

(Transportation Committee)
(At the request of the Highway Patrol)

HIGHWAY PATROL BID PROCEDURES REPEAL

AN ACT to repeal sections 39-03-08.1, 39-03-08.2, 39-03-08.3, 39-03-08.4, and 39-03-08.5 of the North Dakota Century Code, relating to highway patrol bid procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 39-03-08.1, 39-03-08.2, 39-03-08.3, 39-03-08.4, and 39-03-08.5 of the North Dakota Century Code are repealed.

Approved March 4, 1999

Filed March 5, 1999

CHAPTER 333**HOUSE BILL NO. 1079**

(Transportation Committee)
(At the request of the Highway Patrol)

HIGHWAY PATROL POWERS

AN ACT to create and enact a new subsection to section 39-03-09 of the North Dakota Century Code, relating to the powers of the highway patrol; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-03-09 of the North Dakota Century Code is created and enacted as follows:

Of a peace officer when responding to a request for emergency assistance requiring an immediate response regardless of whether the request is being made by another law enforcement agency or officer.

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

Approved March 31, 1999
Filed March 31, 1999

CHAPTER 334

HOUSE BILL NO. 1072

(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 1 of section 39-03.1-10.1 and subdivision a of subsection 4 of section 39-03.1-11 of the North Dakota Century Code, relating to refunds and computation of retirement benefits under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 39-03.1-10.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. If the contributor has less than ten years of service at termination of employment, the refund is payable either on application of the contributor; or, if within thirty days after termination the contributor has not provided a written statement to the board waiving the refund and requesting the contributor's account remain in the fund, automatically in January of the following calendar year.

SECTION 2. AMENDMENT. Subdivision a of subsection 4 of section 39-03.1-11 of 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 three and ~~twenty-five~~ forty 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 August 1, ~~1997~~ 1999, are entitled to receive benefits equal to three and ~~twenty-five~~ forty 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 August 1, ~~1997~~ 1999.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 335

HOUSE BILL NO. 1312 (Representatives Martinson, Maragos)

MOTORCYCLE AND TRAILER REGISTRATION

AN ACT to amend and reenact section 39-04-19 of the North Dakota Century Code, relating to the registration of motorcycles and trailers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴¹ **SECTION 1. AMENDMENT.** Section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

39-04-19. (Effective until June 30, 2000) Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle, or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
 - a. Passenger motor vehicles:

YEARS REGISTERED

| | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th, 8th, and 9th Years | 10th, 11th, and 12th Years | 13th and Subsequent Years |
|-----------------|--|-------------------------------|----------------------------------|---------------------------------|
| Gross Weights | | | | |
| Less than 3,200 | \$ 49.00 | \$ 41.00 | \$ 33.00 | \$ 25.00 |
| 3,200-4,499 | 69.00 | 57.00 | 45.00 | 33.00 |
| 4,500-4,999 | 87.00 | 70.00 | 55.00 | 39.00 |
| 5,000-5,999 | 118.00 | 96.00 | 74.00 | 52.00 |
| 6,000-6,999 | 151.00 | 122.00 | 93.00 | 65.00 |
| 7,000-7,999 | 184.00 | 148.00 | 113.00 | 78.00 |
| 8,000-8,999 | 217.00 | 175.00 | 133.00 | 91.00 |
| 9,000 and over | 250.00 | 201.00 | 153.00 | 104.00 |

²⁴¹ Section 39-04-19 was also amended by section 9 of House Bill No. 1012, chapter 12, and section 1 of House Bill No. 1183, chapter 336.

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th and 8th Years | 9th and 10th Years | 11th and Subsequent Years |
|----------------|--|-------------------|--------------------|---------------------------|
| Not over 4,000 | \$47.00 | \$34.00 | \$29.00 | \$26.00 |
| 4,001- 6,000 | 52.00 | 39.00 | 33.00 | 27.00 |
| 6,001- 8,000 | 57.00 | 44.00 | 37.00 | 28.00 |
| 8,001-10,000 | 62.00 | 49.00 | 41.00 | 30.00 |
| 10,001-12,000 | 67.00 | 54.00 | 45.00 | 32.00 |
| 12,001-14,000 | 72.00 | 59.00 | 49.00 | 35.00 |
| 14,001-16,000 | 77.00 | 64.00 | 53.00 | 38.00 |
| 16,001-18,000 | 82.00 | 69.00 | 57.00 | 40.00 |
| 18,001-20,000 | 85.00 | 72.00 | 59.00 | 41.00 |

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years | 8th, 9th, 10th, 11th, and 12th Years | 13th and Subsequent Years |
|----------------|---|--------------------------------------|---------------------------|
| 20,001-22,000 | \$115.00 | \$89.00 | \$76.00 |
| 22,001-26,000 | 167.00 | 137.00 | 121.00 |
| 26,001-30,000 | 228.00 | 186.00 | 164.00 |
| 30,001-34,000 | 294.00 | 239.00 | 211.00 |
| 34,001-38,000 | 355.00 | 288.00 | 254.00 |
| 38,001-42,000 | 416.00 | 337.00 | 296.00 |
| 42,001-46,000 | 477.00 | 385.00 | 339.00 |
| 46,001-50,000 | 538.00 | 434.00 | 382.00 |
| 50,001-54,000 | 608.00 | 492.00 | 433.00 |
| 54,001-58,000 | 669.00 | 541.00 | 476.00 |
| 58,001-62,000 | 730.00 | 590.00 | 519.00 |
| 62,001-66,000 | 791.00 | 638.00 | 562.00 |
| 66,001-70,000 | 852.00 | 687.00 | 604.00 |
| 70,001-74,000 | 913.00 | 736.00 | 647.00 |
| 74,001-78,000 | 974.00 | 785.00 | 690.00 |
| 78,001-82,000 | 1,035.00 | 834.00 | 733.00 |
| 82,001-86,000 | 1,158.00 | 939.00 | 820.00 |
| 86,001-90,000 | 1,280.00 | 1,043.00 | 907.00 |
| 90,001-94,000 | 1,402.00 | 1,148.00 | 994.00 |
| 94,001-98,000 | 1,524.00 | 1,253.00 | 1,082.00 |
| 98,001-102,000 | 1,646.00 | 1,357.00 | 1,169.00 |

| | | | |
|-----------------|----------|----------|----------|
| 102,001-105,500 | 1,768.00 | 1,462.00 | 1,256.00 |
|-----------------|----------|----------|----------|

c. Motorcycles, fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th and 8th Years | 9th and 10th Years | 11th and Subsequent Years |
|-----------------|--|-------------------------|--------------------------|---------------------------------|
| 20,001-22,000 | \$88.00 | \$74.00 | \$60.00 | \$42.00 |
| 22,001-24,000 | 93.00 | 78.00 | 63.00 | 44.00 |
| 24,001-26,000 | 101.00 | 84.00 | 67.00 | 46.00 |
| 26,001-28,000 | 111.00 | 92.00 | 73.00 | 50.00 |
| 28,001-30,000 | 121.00 | 100.00 | 79.00 | 54.00 |
| 30,001-32,000 | 136.00 | 113.00 | 90.00 | 63.00 |
| 32,001-34,000 | 146.00 | 121.00 | 96.00 | 67.00 |
| 34,001-36,000 | 156.00 | 129.00 | 102.00 | 71.00 |
| 36,001-38,000 | 166.00 | 137.00 | 108.00 | 75.00 |
| 38,001-40,000 | 176.00 | 145.00 | 114.00 | 79.00 |
| 40,001-42,000 | 186.00 | 153.00 | 120.00 | 83.00 |
| 42,001-44,000 | 196.00 | 161.00 | 126.00 | 87.00 |
| 44,001-46,000 | 206.00 | 169.00 | 132.00 | 91.00 |
| 46,001-48,000 | 216.00 | 177.00 | 138.00 | 95.00 |
| 48,001-50,000 | 226.00 | 185.00 | 144.00 | 99.00 |
| 50,001-52,000 | 246.00 | 203.00 | 160.00 | 113.00 |
| 52,001-54,000 | 256.00 | 211.00 | 166.00 | 117.00 |
| 54,001-56,000 | 266.00 | 219.00 | 172.00 | 121.00 |
| 56,001-58,000 | 276.00 | 227.00 | 178.00 | 125.00 |
| 58,001-60,000 | 286.00 | 235.00 | 184.00 | 129.00 |
| 60,001-62,000 | 296.00 | 243.00 | 190.00 | 133.00 |
| 62,001-64,000 | 306.00 | 251.00 | 196.00 | 137.00 |
| 64,001-66,000 | 316.00 | 259.00 | 202.00 | 141.00 |
| 66,001-68,000 | 326.00 | 267.00 | 208.00 | 145.00 |
| 68,001-70,000 | 336.00 | 275.00 | 214.00 | 149.00 |
| 70,001-72,000 | 346.00 | 283.00 | 220.00 | 153.00 |
| 72,001-74,000 | 356.00 | 291.00 | 226.00 | 157.00 |
| 74,001-76,000 | 366.00 | 299.00 | 232.00 | 161.00 |
| 76,001-78,000 | 376.00 | 307.00 | 238.00 | 165.00 |
| 78,001-80,000 | 386.00 | 315.00 | 244.00 | 169.00 |
| 80,001-82,000 | 396.00 | 323.00 | 250.00 | 173.00 |
| 82,001-84,000 | 406.00 | 345.00 | 293.00 | 249.00 |
| 84,001-86,000 | 426.00 | 362.00 | 307.00 | 261.00 |
| 86,001-88,000 | 446.00 | 379.00 | 321.00 | 273.00 |
| 88,001-90,000 | 466.00 | 396.00 | 335.00 | 285.00 |
| 90,001-92,000 | 486.00 | 413.00 | 349.00 | 297.00 |
| 92,001-94,000 | 506.00 | 430.00 | 363.00 | 309.00 |
| 94,001-96,000 | 526.00 | 447.00 | 377.00 | 321.00 |
| 96,001-98,000 | 546.00 | 464.00 | 391.00 | 333.00 |
| 98,001-100,000 | 566.00 | 481.00 | 405.00 | 345.00 |
| 100,001-102,000 | 586.00 | 498.00 | 419.00 | 357.00 |
| 102,001-104,000 | 606.00 | 515.00 | 433.00 | 369.00 |
| 104,001-105,500 | 626.00 | 532.00 | 447.00 | 381.00 |

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

(Effective June 30, 2000) Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle, or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
 - a. Passenger motor vehicles:

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th, 7th, and 8th Years | 9th, 10th, and 11th Years | 12th and Subsequent Years |
|-----------------|--|-------------------------------|---------------------------------|---------------------------------|
| Less than 3,200 | \$49.00 | \$41.00 | \$33.00 | \$25.00 |
| 3,200-4,499 | 69.00 | 57.00 | 45.00 | 33.00 |
| 4,500-4,999 | 87.00 | 70.00 | 55.00 | 39.00 |
| 5,000-5,999 | 118.00 | 96.00 | 74.00 | 52.00 |
| 6,000-6,999 | 151.00 | 122.00 | 93.00 | 65.00 |
| 7,000-7,999 | 184.00 | 148.00 | 113.00 | 78.00 |
| 8,000-8,999 | 217.00 | 175.00 | 133.00 | 91.00 |
| 9,000 and over | 250.00 | 201.00 | 153.00 | 104.00 |

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th and 7th Years | 8th and 9th Years | 10th and Subsequent Years |
|----------------|--|----------------------|----------------------|---------------------------------|
| Not over 4,000 | \$47.00 | \$34.00 | \$29.00 | \$26.00 |
| 4,001-6,000 | 52.00 | 39.00 | 33.00 | 27.00 |
| 6,001-8,000 | 57.00 | 44.00 | 37.00 | 28.00 |
| 8,001-10,000 | 62.00 | 49.00 | 41.00 | 30.00 |
| 10,001-12,000 | 67.00 | 54.00 | 45.00 | 32.00 |

| | | | | |
|---------------|-------|-------|-------|-------|
| 12,001-14,000 | 72.00 | 59.00 | 49.00 | 35.00 |
| 14,001-16,000 | 77.00 | 64.00 | 53.00 | 38.00 |
| 16,001-18,000 | 82.00 | 69.00 | 57.00 | 40.00 |
| 18,001-20,000 | 85.00 | 72.00 | 59.00 | 41.00 |

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th, 8th, 9th, 10th, and 11th Years | 12th and Subsequent Years |
|-----------------|--|-------------------------------------|---------------------------|
| 20,001-22,000 | \$115.00 | \$89.00 | \$76.00 |
| 22,001-26,000 | 167.00 | 137.00 | 121.00 |
| 26,001-30,000 | 228.00 | 186.00 | 164.00 |
| 30,001-34,000 | 294.00 | 239.00 | 211.00 |
| 34,001-38,000 | 355.00 | 288.00 | 254.00 |
| 38,001-42,000 | 416.00 | 337.00 | 296.00 |
| 42,001-46,000 | 477.00 | 385.00 | 339.00 |
| 46,001-50,000 | 538.00 | 434.00 | 382.00 |
| 50,001-54,000 | 608.00 | 492.00 | 433.00 |
| 54,001-58,000 | 669.00 | 541.00 | 476.00 |
| 58,001-62,000 | 730.00 | 590.00 | 519.00 |
| 62,001-66,000 | 791.00 | 638.00 | 562.00 |
| 66,001-70,000 | 852.00 | 687.00 | 604.00 |
| 70,001-74,000 | 913.00 | 736.00 | 647.00 |
| 74,001-78,000 | 974.00 | 785.00 | 690.00 |
| 78,001-82,000 | 1,035.00 | 834.00 | 733.00 |
| 82,001-86,000 | 1,158.00 | 939.00 | 820.00 |
| 86,001-90,000 | 1,280.00 | 1,043.00 | 907.00 |
| 90,001-94,000 | 1,402.00 | 1,148.00 | 994.00 |
| 94,001-98,000 | 1,524.00 | 1,253.00 | 1,082.00 |
| 98,001-102,000 | 1,646.00 | 1,357.00 | 1,169.00 |
| 102,001-105,500 | 1,768.00 | 1,462.00 | 1,256.00 |

c. Motorcycles, fifteen dollars.

- Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
- Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
- Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this

subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th and 7th Years | 8th and 9th Years | 10th and Subsequent Years |
|---------------|--|----------------------|----------------------|---------------------------------|
| 20,001-22,000 | \$88.00 | \$74.00 | \$60.00 | \$42.00 |
| 22,001-24,000 | 93.00 | 78.00 | 63.00 | 44.00 |
| 24,001-26,000 | 101.00 | 84.00 | 67.00 | 46.00 |
| 26,001-28,000 | 111.00 | 92.00 | 73.00 | 50.00 |
| 28,001-30,000 | 121.00 | 100.00 | 79.00 | 54.00 |
| 30,001-32,000 | 136.00 | 113.00 | 90.00 | 63.00 |
| 32,001-34,000 | 146.00 | 121.00 | 96.00 | 67.00 |
| 34,001-36,000 | 156.00 | 129.00 | 102.00 | 71.00 |
| 36,001-38,000 | 166.00 | 137.00 | 108.00 | 75.00 |
| 38,001-40,000 | 176.00 | 145.00 | 114.00 | 79.00 |
| 40,001-42,000 | 186.00 | 153.00 | 120.00 | 83.00 |
| 42,001-44,000 | 196.00 | 161.00 | 126.00 | 87.00 |
| 44,001-46,000 | 206.00 | 169.00 | 132.00 | 91.00 |
| 46,001-48,000 | 216.00 | 177.00 | 138.00 | 95.00 |
| 48,001-50,000 | 226.00 | 185.00 | 144.00 | 99.00 |
| 50,001-52,000 | 246.00 | 203.00 | 160.00 | 113.00 |
| 52,001-54,000 | 256.00 | 211.00 | 166.00 | 117.00 |
| 54,001-56,000 | 266.00 | 219.00 | 172.00 | 121.00 |
| 56,001-58,000 | 276.00 | 227.00 | 178.00 | 125.00 |
| 58,001-60,000 | 286.00 | 235.00 | 184.00 | 129.00 |
| 60,001-62,000 | 296.00 | 243.00 | 190.00 | 133.00 |
| 62,001-64,000 | 306.00 | 251.00 | 196.00 | 137.00 |
| 64,001-66,000 | 316.00 | 259.00 | 202.00 | 141.00 |
| 66,001-68,000 | 326.00 | 267.00 | 208.00 | 145.00 |
| 68,001-70,000 | 336.00 | 275.00 | 214.00 | 149.00 |
| 70,001-72,000 | 346.00 | 283.00 | 220.00 | 153.00 |
| 72,001-74,000 | 356.00 | 291.00 | 226.00 | 157.00 |
| 74,001-76,000 | 366.00 | 299.00 | 232.00 | 161.00 |
| 76,001-78,000 | 376.00 | 307.00 | 238.00 | 165.00 |
| 78,001-80,000 | 386.00 | 315.00 | 244.00 | 169.00 |
| 80,001-82,000 | 396.00 | 323.00 | 250.00 | 173.00 |
| 82,001-84,000 | 406.00 | 345.00 | 293.00 | 249.00 |
| 84,001-86,000 | 426.00 | 362.00 | 307.00 | 261.00 |
| 86,001-88,000 | 446.00 | 379.00 | 321.00 | 273.00 |
| 88,001-90,000 | 466.00 | 396.00 | 335.00 | 285.00 |

| | | | | |
|-----------------|--------|--------|--------|--------|
| 90,001-92,000 | 486.00 | 413.00 | 349.00 | 297.00 |
| 92,001-94,000 | 506.00 | 430.00 | 363.00 | 309.00 |
| 94,001-96,000 | 526.00 | 447.00 | 377.00 | 321.00 |
| 96,001-98,000 | 546.00 | 464.00 | 391.00 | 333.00 |
| 98,001-100,000 | 566.00 | 481.00 | 405.00 | 345.00 |
| 100,001-102,000 | 586.00 | 498.00 | 419.00 | 357.00 |
| 102,001-104,000 | 606.00 | 515.00 | 433.00 | 369.00 |
| 104,001-105,500 | 626.00 | 532.00 | 447.00 | 381.00 |

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 336

HOUSE BILL NO. 1183

(Transportation Committee)

(At the request of the Department of Transportation)

MOTOR VEHICLE REGISTRATION FEES AND FUEL TAXES

AN ACT to amend and reenact sections 39-04-19, 57-43.1-02, and 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle registration fees, motor vehicle fuel taxes, and special fuel taxes; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴² **SECTION 1. AMENDMENT.** Section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

39-04-19. (~~Effective until June 30, 2000~~) Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
 - a. Passenger motor vehicles:

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th, 8th, and 9th Years | 10th, 11th, and 12th Years | 13th and Subsequent Years |
|-----------------|--|---------------------------------|----------------------------------|---------------------------------|
| Less than 3,200 | \$49.00 <u>50.00</u> | \$41.00 <u>42.00</u> | \$33.00 <u>34.00</u> | \$25.00 <u>26.00</u> |
| 3,200-4,499 | 69.00 <u>70.00</u> | 57.00 <u>58.00</u> | 45.00 <u>46.00</u> | 33.00 <u>34.00</u> |
| 4,500-4,999 | 87.00 <u>88.00</u> | 70.00 <u>71.00</u> | 55.00 <u>56.00</u> | 39.00 <u>40.00</u> |
| 5,000-5,999 | 118.00 <u>119.00</u> | 96.00 <u>97.00</u> | 74.00 <u>75.00</u> | 52.00 <u>53.00</u> |
| 6,000-6,999 | 151.00 <u>152.00</u> | 122.00 <u>123.00</u> | 93.00 <u>94.00</u> | 65.00 <u>66.00</u> |

²⁴² Section 39-04-19 was also amended by section 9 of House Bill No. 1012, chapter 12, and section 1 of House Bill No. 1312, chapter 335.

| | | | | |
|----------------|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| 7,000-7,999 | 184.00 <u>185.00</u> | 148.00 <u>149.00</u> | 113.00 <u>114.00</u> | 78.00 <u>79.00</u> |
| 8,000-8,999 | 217.00 <u>218.00</u> | 175.00 <u>176.00</u> | 133.00 <u>134.00</u> | 91.00 <u>92.00</u> |
| 9,000 and over | 250.00 <u>251.00</u> | 201.00 <u>202.00</u> | 153.00 <u>154.00</u> | 104.00 <u>105.00</u> |

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and through 6th Years | | 7th and 8th through 9th Years | | 9th and 10th through 12th Years | | 11th and Subsequent 13th through 19th Years | | 20th and Subsequent Years |
|---------------|--|-------------------------------|-------------------------------|-------------------------------|---------------------------------|-------------------------------|---|-------------------------------|-------------------------------|
| | Not over 4,000 | 47.00 <u>48.00</u> | 34.00 <u>35.00</u> | 29.00 <u>30.00</u> | 26.00 <u>27.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> |
| 4,001- 6,000 | 52.00 <u>53.00</u> | 39.00 <u>40.00</u> | 33.00 <u>34.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> | 27.00 <u>28.00</u> |
| 6,001- 8,000 | 57.00 <u>58.00</u> | 44.00 <u>45.00</u> | 37.00 <u>38.00</u> | 28.00 <u>29.00</u> | 28.00 <u>29.00</u> | 28.00 <u>29.00</u> | 28.00 <u>29.00</u> | 28.00 <u>29.00</u> | 28.00 <u>29.00</u> |
| 8,001-10,000 | 62.00 <u>63.00</u> | 49.00 <u>50.00</u> | 41.00 <u>42.00</u> | 30.00 <u>31.00</u> | 30.00 <u>31.00</u> | 30.00 <u>31.00</u> | 30.00 <u>31.00</u> | 30.00 <u>31.00</u> | 30.00 <u>31.00</u> |
| 10,001-12,000 | 67.00 <u>68.00</u> | 54.00 <u>55.00</u> | 45.00 <u>46.00</u> | 32.00 <u>33.00</u> | 32.00 <u>33.00</u> | 32.00 <u>33.00</u> | 32.00 <u>33.00</u> | 32.00 <u>33.00</u> | 32.00 <u>33.00</u> |
| 12,001-14,000 | 72.00 <u>73.00</u> | 59.00 <u>60.00</u> | 49.00 <u>50.00</u> | 35.00 <u>36.00</u> | 35.00 <u>36.00</u> | 35.00 <u>36.00</u> | 35.00 <u>36.00</u> | 35.00 <u>36.00</u> | 35.00 <u>36.00</u> |
| 14,001-16,000 | 77.00 <u>78.00</u> | 64.00 <u>65.00</u> | 53.00 <u>54.00</u> | 38.00 <u>39.00</u> | 38.00 <u>39.00</u> | 38.00 <u>39.00</u> | 38.00 <u>39.00</u> | 38.00 <u>39.00</u> | 38.00 <u>39.00</u> |
| 16,001-18,000 | 82.00 <u>83.00</u> | 69.00 <u>70.00</u> | 57.00 <u>58.00</u> | 40.00 <u>41.00</u> | 40.00 <u>41.00</u> | 40.00 <u>41.00</u> | 40.00 <u>41.00</u> | 40.00 <u>41.00</u> | 40.00 <u>41.00</u> |
| 18,001-20,000 | 85.00 <u>86.00</u> | 72.00 <u>73.00</u> | 59.00 <u>60.00</u> | 41.00 <u>42.00</u> | 41.00 <u>42.00</u> | 41.00 <u>42.00</u> | 41.00 <u>42.00</u> | 41.00 <u>42.00</u> | 41.00 <u>42.00</u> |

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years | | 8th, 9th, 10th, 11th, and 12th Years | | 13th and Subsequent Years | |
|----------------|---|---------------------------------|--------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| | 20,001- 22,000 | 415.00 <u>116.00</u> | 89.00 <u>90.00</u> | 76.00 <u>77.00</u> | 76.00 <u>77.00</u> | 76.00 <u>77.00</u> |
| 22,001- 26,000 | 167.00 <u>168.00</u> | 137.00 <u>138.00</u> | 121.00 <u>122.00</u> | 121.00 <u>122.00</u> | 121.00 <u>122.00</u> | 122.00 <u>123.00</u> |
| 26,001- 30,000 | 228.00 <u>229.00</u> | 186.00 <u>187.00</u> | 164.00 <u>165.00</u> | 164.00 <u>165.00</u> | 164.00 <u>165.00</u> | 165.00 <u>166.00</u> |
| 30,001- 34,000 | 294.00 <u>295.00</u> | 239.00 <u>240.00</u> | 211.00 <u>212.00</u> | 211.00 <u>212.00</u> | 211.00 <u>212.00</u> | 212.00 <u>213.00</u> |
| 34,001- 38,000 | 355.00 <u>356.00</u> | 288.00 <u>289.00</u> | 254.00 <u>255.00</u> | 254.00 <u>255.00</u> | 254.00 <u>255.00</u> | 255.00 <u>256.00</u> |
| 38,001- 42,000 | 416.00 <u>417.00</u> | 337.00 <u>338.00</u> | 296.00 <u>297.00</u> | 296.00 <u>297.00</u> | 296.00 <u>297.00</u> | 297.00 <u>298.00</u> |
| 42,001- 46,000 | 477.00 <u>478.00</u> | 385.00 <u>386.00</u> | 339.00 <u>340.00</u> | 339.00 <u>340.00</u> | 339.00 <u>340.00</u> | 340.00 <u>341.00</u> |
| 46,001- 50,000 | 538.00 <u>539.00</u> | 434.00 <u>435.00</u> | 382.00 <u>383.00</u> | 382.00 <u>383.00</u> | 382.00 <u>383.00</u> | 383.00 <u>384.00</u> |
| 50,001- 54,000 | 608.00 <u>609.00</u> | 492.00 <u>493.00</u> | 433.00 <u>434.00</u> | 433.00 <u>434.00</u> | 433.00 <u>434.00</u> | 434.00 <u>435.00</u> |
| 54,001- 58,000 | 669.00 <u>670.00</u> | 541.00 <u>542.00</u> | 476.00 <u>477.00</u> | 476.00 <u>477.00</u> | 476.00 <u>477.00</u> | 477.00 <u>478.00</u> |
| 58,001- 62,000 | 730.00 <u>731.00</u> | 590.00 <u>591.00</u> | 519.00 <u>520.00</u> | 519.00 <u>520.00</u> | 519.00 <u>520.00</u> | 520.00 <u>521.00</u> |
| 62,001- 66,000 | 791.00 <u>792.00</u> | 638.00 <u>639.00</u> | 562.00 <u>563.00</u> | 562.00 <u>563.00</u> | 562.00 <u>563.00</u> | 563.00 <u>564.00</u> |
| 66,001- 70,000 | 852.00 <u>853.00</u> | 687.00 <u>688.00</u> | 604.00 <u>605.00</u> | 604.00 <u>605.00</u> | 604.00 <u>605.00</u> | 605.00 <u>606.00</u> |
| 70,001- 74,000 | 913.00 <u>914.00</u> | 736.00 <u>737.00</u> | 647.00 <u>648.00</u> | 647.00 <u>648.00</u> | 647.00 <u>648.00</u> | 648.00 <u>649.00</u> |
| 74,001- 78,000 | 974.00 <u>975.00</u> | 785.00 <u>786.00</u> | 690.00 <u>691.00</u> | 690.00 <u>691.00</u> | 690.00 <u>691.00</u> | 691.00 <u>692.00</u> |
| 78,001- 82,000 | 1,035.00 <u>1,036.00</u> | 834.00 <u>835.00</u> | 733.00 <u>734.00</u> | 733.00 <u>734.00</u> | 733.00 <u>734.00</u> | 734.00 <u>735.00</u> |
| 82,001- 86,000 | 1,158.00 <u>1,159.00</u> | 939.00 <u>940.00</u> | 820.00 <u>821.00</u> | 820.00 <u>821.00</u> | 820.00 <u>821.00</u> | 821.00 <u>822.00</u> |

| | | | | | | |
|-----------------|---------------------|-----------------|---------------------|-----------------|---------------------|-----------------|
| 86,001- 90,000 | 1,280.00 | <u>1,281.00</u> | 1,043.00 | <u>1,044.00</u> | 907.00 | <u>908.00</u> |
| 90,001- 94,000 | 1,402.00 | <u>1,403.00</u> | 1,148.00 | <u>1,149.00</u> | 994.00 | <u>995.00</u> |
| 94,001- 98,000 | 1,524.00 | <u>1,525.00</u> | 1,253.00 | <u>1,254.00</u> | 1,082.00 | <u>1,083.00</u> |
| 98,001-102,000 | 1,646.00 | <u>1,647.00</u> | 1,357.00 | <u>1,358.00</u> | 1,169.00 | <u>1,170.00</u> |
| 102,001-105,500 | 1,768.00 | <u>1,769.00</u> | 1,462.00 | <u>1,463.00</u> | 1,256.00 | <u>1,257.00</u> |

c. Motorcycles, fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th and 8th Years | 9th and 10th Years | 11th and Subsequent Years |
|----------------|--|-------------------|--------------------|---------------------------|
| 20,001- 22,000 | \$88.00 | \$74.00 | \$60.00 | \$42.00 |
| 22,001- 24,000 | 93.00 | 78.00 | 63.00 | 44.00 |
| 24,001- 26,000 | 101.00 | 84.00 | 67.00 | 46.00 |
| 26,001- 28,000 | 111.00 | 92.00 | 73.00 | 50.00 |
| 28,001- 30,000 | 121.00 | 100.00 | 79.00 | 54.00 |
| 30,001- 32,000 | 136.00 | 113.00 | 90.00 | 63.00 |
| 32,001- 34,000 | 146.00 | 121.00 | 96.00 | 67.00 |
| 34,001- 36,000 | 156.00 | 129.00 | 102.00 | 71.00 |
| 36,001- 38,000 | 166.00 | 137.00 | 108.00 | 75.00 |

| | | | | |
|-----------------|--------|--------|--------|--------|
| 38,001- 40,000 | 176.00 | 145.00 | 114.00 | 79.00 |
| 40,001- 42,000 | 186.00 | 153.00 | 120.00 | 83.00 |
| 42,001- 44,000 | 196.00 | 161.00 | 126.00 | 87.00 |
| 44,001- 46,000 | 206.00 | 169.00 | 132.00 | 91.00 |
| 46,001- 48,000 | 216.00 | 177.00 | 138.00 | 95.00 |
| 48,001- 50,000 | 226.00 | 185.00 | 144.00 | 99.00 |
| 50,001- 52,000 | 246.00 | 203.00 | 160.00 | 113.00 |
| 52,001- 54,000 | 256.00 | 211.00 | 166.00 | 117.00 |
| 54,001- 56,000 | 266.00 | 219.00 | 172.00 | 121.00 |
| 56,001- 58,000 | 276.00 | 227.00 | 178.00 | 125.00 |
| 58,001- 60,000 | 286.00 | 235.00 | 184.00 | 129.00 |
| 60,001- 62,000 | 296.00 | 243.00 | 190.00 | 133.00 |
| 62,001- 64,000 | 306.00 | 251.00 | 196.00 | 137.00 |
| 64,001- 66,000 | 316.00 | 259.00 | 202.00 | 141.00 |
| 66,001- 68,000 | 326.00 | 267.00 | 208.00 | 145.00 |
| 68,001- 70,000 | 336.00 | 275.00 | 214.00 | 149.00 |
| 70,001- 72,000 | 346.00 | 283.00 | 220.00 | 153.00 |
| 72,001- 74,000 | 356.00 | 291.00 | 226.00 | 157.00 |
| 74,001- 76,000 | 366.00 | 299.00 | 232.00 | 161.00 |
| 76,001- 78,000 | 376.00 | 307.00 | 238.00 | 165.00 |
| 78,001- 80,000 | 386.00 | 315.00 | 244.00 | 169.00 |
| 80,001- 82,000 | 396.00 | 323.00 | 250.00 | 173.00 |
| 82,001- 84,000 | 406.00 | 345.00 | 293.00 | 249.00 |
| 84,001- 86,000 | 426.00 | 362.00 | 307.00 | 261.00 |
| 86,001- 88,000 | 446.00 | 379.00 | 321.00 | 273.00 |
| 88,001- 90,000 | 466.00 | 396.00 | 335.00 | 285.00 |
| 90,001- 92,000 | 486.00 | 413.00 | 349.00 | 297.00 |
| 92,001- 94,000 | 506.00 | 430.00 | 363.00 | 309.00 |
| 94,001- 96,000 | 526.00 | 447.00 | 377.00 | 321.00 |
| 96,001- 98,000 | 546.00 | 464.00 | 391.00 | 333.00 |
| 98,001-100,000 | 566.00 | 481.00 | 405.00 | 345.00 |
| 100,001-102,000 | 586.00 | 498.00 | 419.00 | 357.00 |
| 102,001-104,000 | 606.00 | 515.00 | 433.00 | 369.00 |
| 104,001-105,500 | 626.00 | 532.00 | 447.00 | 381.00 |

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

(Effective June 30, 2000) Motor vehicle registration fees and mile tax: Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:
 - a. Passenger motor vehicles:

~~YEARS REGISTERED~~

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th, 7th, and 8th Years | 9th, 10th, and 11th Years | 12th and Subsequent Years |
|-----------------|--|-------------------------------|---------------------------------|---------------------------------|
| Less than 3,200 | \$49.00 | \$41.00 | \$33.00 | \$25.00 |
| 3,200-4,499 | 69.00 | 57.00 | 45.00 | 33.00 |
| 4,500-4,999 | 87.00 | 70.00 | 55.00 | 39.00 |
| 5,000-5,999 | 118.00 | 96.00 | 74.00 | 52.00 |
| 6,000-6,999 | 151.00 | 122.00 | 93.00 | 65.00 |
| 7,000-7,999 | 184.00 | 148.00 | 113.00 | 78.00 |
| 8,000-8,999 | 217.00 | 175.00 | 133.00 | 91.00 |
| 9,000 and over | 250.00 | 201.00 | 153.00 | 104.00 |

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or combinations of trucks and trailers which qualify for registration under subsection 5:

~~YEARS REGISTERED~~

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th and 7th Years | 8th and 9th Years | 10th and Subsequent Years |
|----------------|--|----------------------|----------------------|---------------------------------|
| Not over 4,000 | \$47.00 | \$34.00 | \$29.00 | \$26.00 |
| 4,001- 6,000 | 52.00 | 39.00 | 33.00 | 27.00 |
| 6,001- 8,000 | 57.00 | 44.00 | 37.00 | 28.00 |
| 8,001-10,000 | 62.00 | 49.00 | 41.00 | 30.00 |
| 10,001-12,000 | 67.00 | 54.00 | 45.00 | 32.00 |
| 12,001-14,000 | 72.00 | 59.00 | 49.00 | 35.00 |
| 14,001-16,000 | 77.00 | 64.00 | 53.00 | 38.00 |
| 16,001-18,000 | 82.00 | 69.00 | 57.00 | 40.00 |
| 18,001-20,000 | 85.00 | 72.00 | 59.00 | 41.00 |

~~YEARS REGISTERED~~

| Gross Weights | 1st, 2nd, 3rd, 4th, 5th, and 6th Years | 7th, 8th, 9th, 10th, and 11th Years | 12th and Subsequent Years |
|----------------|--|---|---------------------------------|
| 20,001- 22,000 | \$115.00 | \$89.00 | \$76.00 |
| 22,001- 26,000 | 167.00 | 137.00 | 121.00 |
| 26,001- 30,000 | 228.00 | 186.00 | 164.00 |
| 30,001- 34,000 | 294.00 | 239.00 | 211.00 |
| 34,001- 38,000 | 355.00 | 288.00 | 254.00 |

| | | | |
|-----------------|----------|----------|----------|
| 38,001- 42,000 | 416.00 | 337.00 | 296.00 |
| 42,001- 46,000 | 477.00 | 385.00 | 339.00 |
| 46,001- 50,000 | 538.00 | 434.00 | 382.00 |
| 50,001- 54,000 | 608.00 | 492.00 | 433.00 |
| 54,001- 58,000 | 669.00 | 541.00 | 476.00 |
| 58,001- 62,000 | 730.00 | 590.00 | 519.00 |
| 62,001- 66,000 | 791.00 | 638.00 | 562.00 |
| 66,001- 70,000 | 852.00 | 687.00 | 604.00 |
| 70,001- 74,000 | 913.00 | 736.00 | 647.00 |
| 74,001- 78,000 | 974.00 | 785.00 | 690.00 |
| 78,001- 82,000 | 1,035.00 | 834.00 | 733.00 |
| 82,001- 86,000 | 1,158.00 | 939.00 | 820.00 |
| 86,001- 90,000 | 1,280.00 | 1,043.00 | 907.00 |
| 90,001- 94,000 | 1,402.00 | 1,148.00 | 994.00 |
| 94,001- 98,000 | 1,524.00 | 1,253.00 | 1,082.00 |
| 98,001-102,000 | 1,646.00 | 1,357.00 | 1,169.00 |
| 102,001-105,500 | 1,768.00 | 1,462.00 | 1,256.00 |

e. Motorcycles, fifteen dollars.

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars.
5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

-YEARS REGISTERED

| Gross Weights | 1st, 2nd, 3rd, 4th, and 5th Years | 6th and 7th Years | 8th and 9th Years | 10th and Subsequent Years |
|------------------|--|----------------------|----------------------|---------------------------------|
| 20,001- 22,000 | \$88.00 | \$74.00 | \$60.00 | \$42.00 |
| 22,001- 24,000 | 93.00 | 78.00 | 63.00 | 44.00 |
| 24,001- 26,000 | 101.00 | 84.00 | 67.00 | 46.00 |
| 26,001- 28,000 | 111.00 | 92.00 | 73.00 | 50.00 |
| 28,001- 30,000 | 121.00 | 100.00 | 79.00 | 54.00 |
| 30,001- 32,000 | 136.00 | 113.00 | 90.00 | 63.00 |
| 32,001- 34,000 | 146.00 | 121.00 | 96.00 | 67.00 |
| 34,001- 36,000 | 156.00 | 129.00 | 102.00 | 71.00 |
| 36,001- 38,000 | 166.00 | 137.00 | 108.00 | 75.00 |
| 38,001- 40,000 | 176.00 | 145.00 | 114.00 | 79.00 |
| 40,001- 42,000 | 186.00 | 153.00 | 120.00 | 83.00 |
| 42,001- 44,000 | 196.00 | 161.00 | 126.00 | 87.00 |
| 44,001- 46,000 | 206.00 | 169.00 | 132.00 | 91.00 |
| 46,001- 48,000 | 216.00 | 177.00 | 138.00 | 95.00 |
| 48,001- 50,000 | 226.00 | 185.00 | 144.00 | 99.00 |
| 50,001- 52,000 | 246.00 | 203.00 | 160.00 | 113.00 |
| 52,001- 54,000 | 256.00 | 211.00 | 166.00 | 117.00 |
| 54,001- 56,000 | 266.00 | 219.00 | 172.00 | 121.00 |
| 56,001- 58,000 | 276.00 | 227.00 | 178.00 | 125.00 |
| 58,001- 60,000 | 286.00 | 235.00 | 184.00 | 129.00 |
| 60,001- 62,000 | 296.00 | 243.00 | 190.00 | 133.00 |
| 62,001- 64,000 | 306.00 | 251.00 | 196.00 | 137.00 |
| 64,001- 66,000 | 316.00 | 259.00 | 202.00 | 141.00 |
| 66,001- 68,000 | 326.00 | 267.00 | 208.00 | 145.00 |
| 68,001- 70,000 | 336.00 | 275.00 | 214.00 | 149.00 |
| 70,001- 72,000 | 346.00 | 283.00 | 220.00 | 153.00 |
| 72,001- 74,000 | 356.00 | 291.00 | 226.00 | 157.00 |
| 74,001- 76,000 | 366.00 | 299.00 | 232.00 | 161.00 |
| 76,001- 78,000 | 376.00 | 307.00 | 238.00 | 165.00 |
| 78,001- 80,000 | 386.00 | 315.00 | 244.00 | 169.00 |
| 80,001- 82,000 | 396.00 | 323.00 | 250.00 | 173.00 |
| 82,001- 84,000 | 406.00 | 345.00 | 293.00 | 249.00 |
| 84,001- 86,000 | 426.00 | 362.00 | 307.00 | 261.00 |
| 86,001- 88,000 | 446.00 | 379.00 | 321.00 | 273.00 |
| 88,001- 90,000 | 466.00 | 396.00 | 335.00 | 285.00 |
| 90,001- 92,000 | 486.00 | 413.00 | 349.00 | 297.00 |
| 92,001- 94,000 | 506.00 | 430.00 | 363.00 | 309.00 |
| 94,001- 96,000 | 526.00 | 447.00 | 377.00 | 321.00 |
| 96,001- 98,000 | 546.00 | 464.00 | 391.00 | 333.00 |
| 98,001- 100,000 | 566.00 | 481.00 | 405.00 | 345.00 |
| 100,001- 102,000 | 586.00 | 498.00 | 419.00 | 357.00 |
| 102,001- 104,000 | 606.00 | 515.00 | 433.00 | 369.00 |
| 104,001- 105,500 | 626.00 | 532.00 | 447.00 | 381.00 |

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

²⁴³ **SECTION 2. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. (~~Effective through December 31, 1999~~) Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of ~~twenty~~ twenty-one cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. The dealer shall collect the tax imposed by this section from the consumer on all sales.
3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

(~~Effective after December 31, 1999~~) Tax imposed on motor vehicle fuels.

- ~~1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.~~
- ~~2. The dealer shall collect the tax imposed by this section from the consumer on all sales.~~
- ~~3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~

²⁴⁴ **SECTION 3. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (~~Effective through December 31, 1999~~) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of ~~twenty~~ twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. The dealer shall remit the tax imposed by this section on all sales to consumers.

²⁴³ Section 57-43.1-02 was also amended by section 2 of Senate Bill No. 2177, chapter 526, and section 1 of House Bill No. 1130, chapter 527.

²⁴⁴ Section 57-43.2-02 was also amended by section 32 of Senate Bill No. 2177, chapter 526, and section 2 of House Bill No. 1130, chapter 527.

3. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.

~~(Effective after December 31, 1999) Tax imposed.~~

1. ~~Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
2. ~~The dealer shall remit the tax imposed by this section on all sales to consumers.~~
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

SECTION 4. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1999-2000 interim the various sources of revenues for highway funding and comparisons with other states' highway funding systems to develop an optimum blend of reliable funding sources for highway purposes. If the legislative council conducts this study, the council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 5. EFFECTIVE DATE. Section 1 of this Act is effective for registration fees due after July 31, 1999. Sections 2 and 3 of this Act are effective for sale, use, or delivery of motor vehicle fuel and special fuel after June 30, 1999.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 337

HOUSE BILL NO. 1380

(Representatives Weisz, Thorpe, Tollefson)
(Senators Nething, O'Connell)

PUBLIC TRANSPORTATION FUND

AN ACT to amend and reenact sections 39-04.2-03 and 39-04.2-04 of the North Dakota Century Code, relating to the public transportation fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04.2-03 of the North Dakota Century Code is amended and reenacted as follows:

39-04.2-03. Additional registration fee - Deposit in fund. At the time of registering a motor vehicle subject to registration under section 39-04-19, the owner shall pay to the director in addition to the registration fee a fee of ~~one dollar~~ two dollars for each motor vehicle registered. The fee must be deposited with the state treasurer, who shall credit the fee to the public transportation fund.

SECTION 2. AMENDMENT. Section 39-04.2-04 of the North Dakota Century Code is amended and reenacted as follows:

39-04.2-04. Distribution of funds.

1. Moneys appropriated by the legislative assembly to the public transportation fund must be disbursed under guidelines issued by the director. The funds must be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation and for other expenditures authorized by the director.
2. Following authorization of the director, the state treasurer shall pay the public transportation funds to transportation providers in each county. Each county shall receive ~~six~~ twelve thousand ~~one~~ two hundred dollars plus ~~fifty cents~~ one dollar per capita of population in the county, based upon the latest regular or special official federal census. Each year the director shall increase or decrease the ~~fifty cents~~ one dollar per capita amount in order to distribute all funds appropriated for the biennium. If there are multiple transportation providers in one county, then the base amount of ~~six~~ twelve thousand ~~one~~ two hundred dollars must be divided equally among the providers and the additional per capita amount must be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county.

3. Unless otherwise provided by law, any moneys remaining in the fund at the end of each biennium must be ~~put back into~~ retained in the public transportation fund for redistribution.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 338

SENATE BILL NO. 2321

(Senator Tomac)
(Representatives Mickelson, Renner)

VEHICLE DAMAGE DISCLOSURE

AN ACT to amend and reenact sections 39-05-17.2 and 39-05-20.2 of the North Dakota Century Code, relating to vehicle damage disclosure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁵ **SECTION 1. AMENDMENT.** Section 39-05-17.2 of the North Dakota Century Code is amended and reenacted as follows:

39-05-17.2. Body damage disclosure - Rules - When required - Penalty.

1. The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department ~~must refuse to~~ may not transfer the title without the required damage disclosure statement.
2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on all current year models of motor vehicles and those models manufactured in the seven years before the current model year. When a motor vehicle has been subject to this disclosure requirement and more than eight years have elapsed since the date of manufacture, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.
3. As used in this section, "motor vehicle body damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of five eight thousand dollars or forty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.
4. A person repairing, replacing parts, or performing body work on a motor vehicle that is less than eight years old shall provide a statement

²⁴⁵ Section 39-05-17.2 was also amended by section 4 of Senate Bill No. 2161, chapter 330.

to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle body damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, the person repairing, replacing parts, or performing body work on the motor vehicle that is less than eight years old shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.

5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.
6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 39-05-20.2 of the North Dakota Century Code is amended and reenacted as follows:

39-05-20.2. Issuance of salvage certificate of title. The owner of a vehicle that is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application a certificate of inspection in the form required by the department, the salvage certificate of title, and a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle; the words "previously salvaged" and a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 339

SENATE BILL NO. 2233

(Senator Cook)

(Representatives R. Kelsch, Porter)

OPERATOR'S LICENSE PHOTOGRAPH BACKGROUND

AN ACT to amend and reenact sections 39-06-03.1, 39-06-14, and 39-06-19 of the North Dakota Century Code, relating to the photograph background for operator's licenses and identification cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁶ **SECTION 1. AMENDMENT.** Section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-06-03.1. Nondriver photo identification card issued by director - Release of information - Penalty - Public awareness.

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident of the age of twelve years or over who fulfills the requirements of this section. The director may issue upon request a nondriver color photo identification card to any North Dakota resident under twelve years of age who fulfills the requirements of this section, except that the form of verification of the name and the date of birth is in the director's discretion, as is the manner in which the records are kept. A nondriver color photo identification card issued to a resident under twelve years of age expires on the twelfth birthday of that resident. If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license ~~of an operator under the age of twenty-one years~~ for an operator of that age.
2. The name and date of birth on all original applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:
 - a. Birth certificate.
 - b. Any other documentary evidence which confirms to the satisfaction of the examining officer the true identity and date of birth of the applicant.
3. The fee is eight dollars. Fees collected pursuant to this section must be paid monthly into the highway fund in the state treasury.

²⁴⁶ Section 39-06-03.1 was also amended by section 2 of House Bill No. 1182, chapter 340.

4. Any information obtained by the director from an applicant for the issuance, renewal, or replacement of an identification card issuable pursuant to this chapter may only be released in accordance with the provisions of section 39-16-03.
5. It is a class B misdemeanor for any person, except the director or the director's authorized agent, to print or otherwise produce or reproduce cards or their components, which may be utilized as identification cards issued pursuant to this section.
6. The director is hereby authorized to utilize whatever advertising deemed necessary to make the public aware of the card and its use.
7. Identification cards issued pursuant to this section shall be sufficient identification whenever identification is required.
8. The director shall cancel any card upon determining that the holder is not entitled to the issuance of the card under the laws of this state, or the holder has failed to give the required or correct information to the director, or has committed fraud in making such application, or the fee was in the form of an insufficient or no-account check. Upon cancellation, the holder shall surrender such card to the director. When a cancellation is in effect, any law enforcement officer may take custody of such card.
9. A duplicate card may be obtained by making an application and paying an eight dollar fee. For a cardholder who has reached the age of eighteen or twenty-one, a replacement card may be obtained by making an application and paying an eight dollar fee.

²⁴⁷ **SECTION 2. AMENDMENT.** Section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

39-06-14. Licenses issued to operators - General - Classified driver's license.

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with

²⁴⁷ Section 39-06-14 was also amended by section 5 of Senate Bill No. 2161, chapter 330.

the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

2. a. All applicants holding a valid North Dakota operator's license making application for renewal must be issued a class D license without being subjected to an examination as herein provided.
- b. All applicants, except those holding a valid North Dakota operator's license who will be issued a class D license, applying for issuance of operator licenses must be issued a classified license after having been required to submit to an examination in the type of motor vehicle or combination of vehicles for which license is desired and which license shall authorize the holder to drive the vehicles as provided in section 39-06.2-09, or as follows:
 - (1) Class D. Any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms]. A driver with a class D license may operate a farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92 kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed sixteen thousand pounds [7257.48 kilograms].
 - (2) A house car or a vehicle towing a travel trailer being used solely for personal purposes may be driven with a class D license.
 - (3) Farm exemption. The holder of a class D license may operate any two-axle or tandem-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck or truck tractor towing a trailer, semitrailer, or farm trailer exempted under subsection 3 of section 39-06.2-06, except:
 - (a) A double trailer, triple trailer, or, if under eighteen years of age, a truck tractor as defined in subsection 85 of section 39-01-01.
 - (b) A bus designed to carry sixteen or more passengers, including the driver.
 - (4) Class M. Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, tractors, and vehicles on which the operator or

- passengers, or both, ride within an enclosed cab. A class M vehicle may not be operated under a class A, B, C, or D license.
- c. The holder of a class A, B, C, or D license may receive a class M endorsement upon successful completion of an examination.
 - d. The holder of a class A, B, or C license may drive any vehicle in that classification, or lesser classification, except a class M vehicle.
 - e. An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class M learner's permit after successful completion of a written examination. The class M license will be issued after the applicant has successfully completed a driver's examination.
 - f. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age shall hold an initial learner's permit for at least two months before applying for a class M operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.
3. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to the holder is deemed to be driving a motor vehicle without being duly licensed under this chapter. The holder of a classified license who desires to obtain a different class license in one of the classes provided by this chapter must exchange or renew the license. The director may adopt rules the director determines are necessary with respect to such renewals or exchanges for the proper administration of this chapter. No class A, B, or C license may be issued to any person under eighteen years of age, except a class A, B, or C type license specially restricted to use for custom harvest purposes must be issued to a person at least sixteen years of age who satisfactorily completes the appropriate examinations.
 4. If any holder of a license issued pursuant to this chapter suffers permanent loss of use of a hand, arm, foot, leg, or eye, the person shall, before operating any motor vehicle or motorcycle, make a report thereof to the director who shall take such reasonable action as may be proper under the provisions of this chapter as to reexamination to determine if the licensee is capable of operating vehicles for which the individual is licensed.
 5. The director may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road.

If the applicant passes the written examination and the director is satisfied that the applicant has adequate eyesight, the director may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instruction permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

SECTION 3. AMENDMENT. Section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

39-06-19. Expiration of license - Renewal. Every operator's license issued under this chapter expires and is renewed according to this section. The expiration date of operator's license for every person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of operator's license for every person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. If the licensee has reached the age of eighteen, and desires reissuance of a license with the distinctive background for licensees at least the age of eighteen and under the age of twenty-one, the applicant may apply at any time for a replacement license. If the licensee has reached the age of twenty-one and desires reissuance of a license without the distinctive color background required by section 39-06-14, the applicant may apply at any time for a replacement license. In all other cases, application with fee for renewal of license must be presented to the director not prior to ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order. Every application for renewal of a license by an applicant must be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The director shall provide visual examination equipment at each location where a license may be renewed. The initial application for a motor vehicle operator's license may be accompanied by a statement of examination from a licensed physician or an optometrist, stating the corrected and uncorrected vision of the applicant, in lieu of the department examination. Such examination must be within six months of the driver license application. Every person submitting an application and fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to such application, must be treated as a new driver. The fee for renewal or replacement of an operator's license is ten dollars.

Approved March 15, 1999
Filed March 16, 1999

CHAPTER 340

HOUSE BILL NO. 1182

(Transportation Committee)

(At the request of the Department of Transportation)

DOT MEDICAL AND CRIMINAL REPORTS

AN ACT to amend and reenact subsections 1 and 4 of section 23-07-01.1, subsection 1 of section 39-06-03.1, subsections 1, 2, and 3 of section 39-06-07.2, section 39-06-27, subsections 4, 6, and 7 of section 39-06-32, section 39-08-21, and subsection 1 of section 39-20-05 of the North Dakota Century Code, relating to reporting of physical or mental disorders to the department of transportation, nondriver photo identification cards, medical advice to the director, reporting of conviction, suspension, or revocation, or failure to appear by other jurisdictions, hearings on suspension or revocation for unlawful use of licenses, and medical qualifications exemptions for intrastate drivers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 23-07-01.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. All physicians and other medical professionals may report immediately to the department of transportation in writing, the name, date of birth, and address of every person fourteen years of age or over coming before them for examination, attendance, care, or treatment when there is reasonable cause to believe that such person due to physical or mental reason is incapable of safely operating a motor vehicle or diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments.
4. Any physician or other medical professional who fails to make a report or who in good faith makes a report, gives an opinion or recommendation pursuant to this section, or participates in any proceeding founded upon this section is immune from any liability, civil or criminal, that might otherwise be incurred, as a result of such report, except for perjury.

²⁴⁸ **SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue upon request a nondriver color photo identification card to any North Dakota resident ~~of the age of twelve years or over~~ who fulfills the requirements of this section. ~~The director may issue upon request a nondriver color photo identification card to~~

²⁴⁸ Section 39-06-03.1 was also amended by section 1 of Senate Bill No. 2233, chapter 339.

any North Dakota resident under twelve years of age who fulfills the requirements of this section, except that the form of verification of the name and the date of birth is in the director's discretion, as is the manner in which the records are kept. A nondriver color photo identification card issued to a resident under twelve years of age expires on the twelfth birthday of that resident. 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 3. AMENDMENT. Subsections 1, 2, and 3 of section 39-06-07.2 of the North Dakota Century Code are amended and reenacted as follows:

1. The director is authorized to seek professional medical advice from any physician or optometrist authorized to practice in this state, and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses pursuant to this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.
2. In addition to advice sought and received pursuant to subsection 1, the director may consider information and advice received from an individual applicant's or driver's personal physician or optometrist. Any examination and report requested by the applicant or driver or required to be taken and provided by the director pursuant to this chapter must be at the expense of the applicant or driver.
3. Any physician or optometrist providing advice to the director or director's authorized agent pursuant to subsection 1 shall incur no liability for any opinion, recommendation, or advice provided.

SECTION 4. AMENDMENT. Section 39-06-27 of the North Dakota Century Code is amended and reenacted as follows:

39-06-27. Suspending licenses upon conviction, suspension, or revocation in another state jurisdiction. The director may suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of ~~such~~ that person in a tribal court or in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator. The director may act on a report of a conviction in tribal court received from any tribal law enforcement agency. This section may not be construed as authorizing the assessment of points against a resident driver's record in accordance with chapter 39-06.1, except upon conviction of a resident driver for a criminal offense in a tribal court or in another state which is equivalent to one of those offenses defined in section 39-06.1-05. ~~No~~ A suspension or revocation may not be imposed for convictions for driving under suspension or revocation on an Indian reservation or in another state if a valid North Dakota license or permit was in effect at the time of the violation. For the purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the drivers licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

Upon receipt of a certification that the operating privileges of a resident of this state have been suspended or revoked on an Indian reservation or in any other state pursuant to a law providing for the suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle

accident, under circumstances ~~which~~ that would require the director to suspend a nonresident's operating privileges had the accident occurred in this state, the director shall suspend the license of ~~such~~ the resident if the resident was the driver of a motor vehicle involved in ~~such~~ the accident. ~~Such~~ The suspension continues until ~~such~~ the resident furnishes evidence satisfactory to the director of the person's compliance with the laws of ~~such~~ the Indian reservation or the other state relating to the deposit of security or payment of a judgment arising out of a motor vehicle accident, to the extent that ~~such~~ compliance would be required if the accident had occurred in this state.

SECTION 5. AMENDMENT. Subsections 4, 6, and 7 of section 39-06-32 of the North Dakota Century Code are amended and reenacted as follows:

4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's 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 39-06.2-10.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, in violation of section 39-06.1-04, ~~or~~ willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.
7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's 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.

²⁴⁹ **SECTION 6. AMENDMENT.** Section 39-08-21 of the North Dakota Century Code is amended and reenacted as follows:

39-08-21. Medical qualifications exemption for intrastate drivers. Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection 2 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who is qualified through a state medical waiver program to operate a commercial motor vehicle within the boundaries of this state or a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state;
3. Does not operate a motor vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued pursuant to the Hazardous Materials Transportation Act [49 U.S.C. App. 1801 et seq.]; and
4. Has a medical or physical condition which:
 - a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, Chapter III, subchapter B;
 - b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
 - c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

²⁵⁰ **SECTION 7. AMENDMENT.** Subsection 1 of section 39-20-05 of 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~~ thirty days after the date of issuance of the temporary operator's permit; ~~but the hearing officer may extend the hearing to within thirty days after the issuance of the temporary operator's permit to accommodate the efficient scheduling of hearings.~~ If the hearing date is extended beyond

²⁴⁹ Section 39-08-21 was also amended by section 1 of House Bill No. 1343, chapter 348.

²⁵⁰ Section 39-20-05 was also amended by section 62 of House Bill No. 1275, chapter 278.

~~twenty five~~ thirty 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.

SECTION 8. EMERGENCY. Section 6 of this Act is declared to be an emergency measure.

Approved April 8, 1999

Filed April 8, 1999

CHAPTER 341

HOUSE BILL NO. 1291

(Representatives Mahoney, Fairfield, Keiser, R. Kelsch)
(Senators Kringstad, O'Connell)

GRADUATED DRIVER'S LICENSES

AN ACT to create and enact a new section to chapter 39-06 of the North Dakota Century Code, relating to an operator's license for a person under eighteen years of age; and to amend and reenact sections 39-06-04, 39-06-17, and 39-06.1-08 of the North Dakota Century Code, relating to operator's permits and licenses for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-04 of the North Dakota Century Code is amended and reenacted as follows:

39-06-04. Instruction permit. Any person who is at least fourteen years of age may apply to the director for an instruction permit. The director may issue to the applicant an instruction permit ~~which~~ that entitles the applicant while having such permit in the permittee's immediate possession to drive a motor vehicle upon the public highways for a period of one year when accompanied by a licensed operator who holds a license corresponding to the vehicle the permittee operates ~~and, who is at least eighteen years of age, who has had at least one year~~ three years of driving experience, and who is occupying a seat beside the driver. An individual other than the supervising driver and the permitholder may not be in the front seat unless the vehicle has only a front seat, in which case, the supervising driver must be seated next to the permitholder. Persons holding an instruction permit for the operation of a motorcycle shall operate the motorcycle only during hours when the use of headlights is not required pursuant to section 39-21-01, and may not carry or transport any passenger. Any instruction permit may be renewed or a new permit issued for an additional period. A person who is not yet eighteen years of age is not eligible for a license until that person has had an instruction permit issued for at least ~~three~~ six months. The director may recognize an instruction permit issued by another jurisdiction in computing the ~~three-month~~ six-month instructional period.

SECTION 2. AMENDMENT. Section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

39-06-17. Restricted licenses - Penalty for violation.

1. The director, upon issuing an operator's license or a temporary restricted operator's license pursuant to section 39-06.1-11, has authority to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the director may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

2. The director may either issue a special restricted license or may set forth such restrictions upon the usual license form. The director shall likewise restrict licenses pursuant to the requirements of section 39-16.1-09.
3. A restricted operator's license or permit to operate the parent's or guardian's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
 - a. The child is at least fourteen years of age.
 - b. The child is qualified to operate an automobile safely.
 - c. It is necessary for the child to drive the parent's or guardian's automobile without being accompanied by an adult.
 - d. The child has ~~completed~~:
 - (1) Completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or, ~~in the alternative, has successfully~~
 - (2) Successfully completed a course at an approved commercial driver training school.

The parent or guardian at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

4. The director may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee is entitled to a hearing as upon a suspension or revocation under this chapter.
5. It is a class B misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to that person other than restrictions imposed under subsection 6. If the restricted license was issued under section 39-06.1-11 and the underlying suspension was imposed for a violation of section 39-08-01 or equivalent ordinance, or is governed by chapter 39-20, punishment is as provided in subsection 2 of section 39-06-42 and upon receiving notice of the conviction the director shall revoke, without opportunity for hearing, the licensee's restricted license and shall extend the underlying suspension for a like period of not more than one year. The director may not issue a restricted license for the extended period of suspension imposed under this subsection. If the conviction referred to in this section is reversed by an appellate court, the director shall restore the

person to the status held by the person prior to the conviction, including restoration of driving privileges if appropriate.

6. A restricted license issued under subsection 3 to a child at least fourteen years of age to operate a parent's or guardian's automobile authorizes the licenseholder to drive the type or class of motor vehicle specified on the restricted license only under the following conditions:
 - a. A restricted licenseholder must be in possession of the license while operating the motor vehicle.
 - b. An individual holding a restricted driver's license driving a motor vehicle may not carry more passengers than the vehicle manufacturer's suggested passenger capacity.

SECTION 3. A new section to chapter 39-06 of the North Dakota Century Code is created and enacted as follows:

Special provisions for minor operators.

1. The director shall cancel the permit or license to operate a motor vehicle of an individual who has committed acts resulting in an accumulated point total in excess of five points as provided for a violation under section 39-06.1-10 or has committed an alcohol-related offense while operating a motor vehicle, if:
 - a. The acts or offenses were committed while the individual was a minor; and
 - b. The individual admitted the violation, was found to have committed the violation by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense.
2. If an individual has had that individual's license or permit canceled under subsection 1, the director shall deem that individual to have never have had any license or permit to operate a motor vehicle and may not issue any license or permit to drive other than an instruction permit or a restricted instruction permit after the completion of any period of suspension or revocation. After the issuance of an instruction permit or restricted instruction permit, the director may not issue any other license or permit to that individual until, while using the permit issued under this section, that individual:
 - a. (1) Completes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
 - (2) Successfully completes a course at an approved commercial driver training school; and
 - b. Satisfies all other requirements that apply to that individual for that license or permit.

SECTION 4. AMENDMENT. Section 39-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-08. Nonmoving violation defined. For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-11, subsection 6 of section 39-06-17, and section 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-51, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.
2. A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 39-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

Approved April 15, 1999

Filed April 15, 1999

CHAPTER 342

SENATE BILL NO. 2406

(Senators B. Stenehjem, Cook, Kringstad, Tomac)
(Representatives Drovdal, Lemieux)

REVOKED AND SUSPENDED LICENSES AND LIABILITY INSURANCE

AN ACT to amend and reenact sections 39-06-35, 39-06-36, and 39-08-20 of the North Dakota Century Code, relating to revoked and suspended licenses and driving without liability insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 director a reinstatement fee of ~~twenty five~~ fifty dollars, or ~~fifty one hundred~~ 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 compliance with 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 2. 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 director may not then issue a new license unless and until the director 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 director a revocation reinstatement fee of ~~twenty five~~ fifty dollars, or ~~fifty one hundred~~ 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 3. AMENDMENT. Section 39-08-20 of the North Dakota Century Code is amended and reenacted as follows:

39-08-20. Driving without liability insurance prohibited - Penalty.

1. 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 be charged with a violation of this section if that person fails to submit ~~such~~ satisfactory evidence of the policy 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. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.
2. Upon conviction for a violation of this section or equivalent ordinance, the person who has been convicted shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of three years and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
3. A person who has been convicted for violation of this section or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.

4. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

Approved March 16, 1999

Filed March 16, 1999

CHAPTER 343

SENATE BILL NO. 2343 (Senators W. Stenehjem, B. Stenehjem)

FAILURE TO YIELD TO EMERGENCY VEHICLE

AN ACT to create and enact section 39-10-26.2 of the North Dakota Century Code, relating to the presumption of owner violation for failing to yield right of way to an emergency vehicle; and to amend and reenact subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to the fees for noncriminal traffic violations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of 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 violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, 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.

SECTION 2. Section 39-10-26.2 of the North Dakota Century Code is created and enacted as follows:

39-10-26.2. Permitting use of vehicle to violate section 39-10-26 prohibited - Presumption of permission - Defense - Dual prosecution prohibited. The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-26. If a motor vehicle is seen violating section 39-10-26, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-26, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-26. Violation of this section is not a lesser included offense of violation of section 39-10-26.

Approved March 16, 1999
Filed March 16, 1999

²⁵¹ Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2127, chapter 344.

CHAPTER 344

SENATE BILL NO. 2127

(Senators Thane, Mutzenberger)

(Representatives Jensen, Rose)

(At the request of the State Department of Health)

DEMERIT POINTS AND SEATBELT USE

AN ACT to create and enact a new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to demerit points; and to amend and reenact subsection 2 of section 39-06.1-06 and section 39-21-41.2 of the North Dakota Century Code, relating to use of seatbelts and restraints.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵² **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of 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 violation of section 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, 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.
 - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.

SECTION 2. A new paragraph to subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

| | |
|---|----------------|
| <u>Failing to have a minor in a child restraint system or seatbelt in violation of section 39-21-41.2</u> | <u>1 point</u> |
|---|----------------|

SECTION 3. AMENDMENT. Section 39-21-41.2 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.2. Child restraint devices - Penalty - Evidence.

1. If a child, under ~~three~~ four years of age, is present in any motor vehicle, that motor vehicle must be equipped with at least one child restraint system for each such child. The child restraint system must meet the

²⁵² Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2343, chapter 343.

standards adopted by the United States department of transportation for those systems [49 CFR 571.213]. While the motor vehicle is in motion, each such child must be properly secured in the child restraint system in accordance with the manufacturer's instructions. While the motor vehicle is moving, each child of ~~three~~ four through ~~ten~~ seventeen years of age who is in the motor vehicle must be in an approved child restraint system in accordance with the manufacturer's instructions or correctly buckled in a seatbelt. Use of child restraint systems and seatbelts is not required in motor vehicles that were not equipped with seatbelts when manufactured. If all of the seatbelts are used by other family members in the vehicle or if a child is being transported in an emergency situation, this section does not apply.

2. ~~Violation of this section is punishable by a fine not to exceed twenty dollars.~~
3. Violation of this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved April 16, 1999
Filed April 16, 1999

CHAPTER 345**HOUSE BILL NO. 1324**
(Representatives Belter, Herbel)
(Senators Mutch, Thane)**AGRICULTURAL HOURS OF SERVICE EXEMPTION**

AN ACT to amend and reenact section 39-06.2-17 of the North Dakota Century Code, relating to the hours of service exemption for the transportation of agricultural commodities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06.2-17 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-17. Hours of service exemption - Transportation of agricultural commodities. Federal regulations and the provisions of chapter 39-32 governing maximum driving and on-duty time do not apply to a driver transporting agricultural commodities or farm supplies, including farm equipment and machinery, for agricultural purposes in this state during planting and harvesting seasons from ~~February fifteenth~~ January first through ~~December fifteenth~~ thirty-first, if the transportation is limited to an area within a one hundred air-mile radius from the source of the commodities or the distribution point for the farm supplies.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 346

HOUSE BILL NO. 1131

(Transportation Committee)

(At the request of the Department of Transportation)

DRIVING UNDER THE INFLUENCE PENALTIES

AN ACT to amend and reenact subdivisions b and e of subsection 4 of section 39-08-01 and section 39-08-01.3 of the North Dakota Century Code, relating to the penalties for operating a vehicle while under the influence of intoxicating liquor or drugs; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵³ **SECTION 1. AMENDMENT.** Subdivisions b and e of subsection 4 of section 39-08-01 of the North Dakota Century Code are amended and reenacted as follows:

- b. For a second offense within five years, the sentence must include at least ~~four~~ five days' imprisonment of which forty-eight hours must be served consecutively, or ~~ten~~ thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
- e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 ~~except that a fine or a sentence of imprisonment may be suspended in any of the following instances:~~
 - (1) ~~Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.~~
 - (2) ~~If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.~~

SECTION 2. AMENDMENT. Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

²⁵³ Section 39-08-01 was also amended by section 3 of House Bill No. 1304, chapter 112.

39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the seizure, forfeiture, and sale of motor vehicles. A motor vehicle owned and operated by a person upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the person is in violation of section 39-08-01 or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least ~~three times~~ one other time within the five years preceding the violation. The court may also require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate.

Approved April 22, 1999

Filed April 22, 1999

CHAPTER 347**HOUSE BILL NO. 1326**

(Representatives Galvin, Grumbo, Klein)
(Senators Cook, B. Stenehjem)

UNINSURED MOTORIST ACCIDENT DAMAGES

AN ACT to provide damages in accidents with uninsured motorists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Uninsured motorist - Insurance deductible. If a person causes damage to another or another's property with a motor vehicle while in violation of section 39-08-20, at minimum the court shall order that person to pay to the other person the amount of the deductible on that person's insurance.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 348

HOUSE BILL NO. 1343 (Representatives Delzer, Kempenich) (Senators Freborg, B. Stenehjem)

COMMERCIAL DRIVERS MEDICAL REGULATION EXEMPTION

AN ACT to amend and reenact section 39-08-21 of the North Dakota Century Code, relating to an exemption from medical regulations for certain drivers of commercial vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁴ **SECTION 1. AMENDMENT.** Section 39-08-21 of the North Dakota Century Code is amended and reenacted as follows:

39-08-21. Medical qualifications exemption for intrastate drivers. Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection 2 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state; and
3. ~~Does not operate a motor vehicle used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued pursuant to the Hazardous Materials Transportation Act [49 U.S.C. App. 1801 et seq.]; and~~
4. Has a medical or physical condition ~~which~~ that:
 - a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, Chapter III, subchapter B;
 - b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
 - c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

²⁵⁴ Section 39-08-21 was also amended by section 6 of House Bill No. 1182, chapter 340.

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

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 349

SENATE BILL NO. 2184

(Transportation Committee)

(At the request of the Department of Transportation)

TRAFFIC CONTROL SIGNALS

AN ACT to amend and reenact sections 39-10-05, 39-10-06, and 39-10-07 of the North Dakota Century Code, relating to traffic control signals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-05 of the North Dakota Century Code is amended and reenacted as follows:

39-10-05. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow may be used, except for special pedestrian signals carrying a word or legend, and said lights must indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green ~~indication~~ indications:

- a. Vehicular traffic facing a circular green ~~signal~~ indication may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
- b. Vehicular traffic facing a green arrow ~~signal~~ indication, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
- c. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing any green ~~signal~~ indication, except when the sole green ~~signal~~ indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

- a. Vehicular traffic facing a steady circular yellow ~~signal~~ or yellow arrow indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic may not enter the intersection.

- b. Pedestrians facing a steady circular yellow signal or yellow arrow indication, unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian may then start to cross the roadway.
3. Steady red indication:
- a. Vehicular traffic facing a steady circular red signal indication alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided for in subdivision ~~b~~ c.
- b. Vehicular traffic facing a steady red arrow indication may not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another indication, must stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and must remain standing until an indication permitting the movement indicated by the red arrow is shown except as provided for in subdivision c.
- c. Except when a sign is in place prohibiting a turn, vehicular traffic facing a any steady red signal indication may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required by ~~subdivision~~ subdivisions a and b. Such vehicular traffic shall yield the right of way to pedestrians lawfully within adjacent crosswalk and to other traffic lawfully using the intersection.
- ~~e.~~ d. Unless otherwise directed by a pedestrian-control signal as provided for in section 39-10-06, pedestrians facing a steady circular red signal or red arrow indication alone may not enter the roadway.
4. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable, except as to those provisions which by their nature can have no application. Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any such sign or marking the stop must be made at the signal.

SECTION 2. AMENDMENT. Section 39-10-06 of the North Dakota Century Code is amended and reenacted as follows:

39-10-06. Pedestrian control signals. Whenever special pedestrian control signals exhibiting the words "Walk" or "Don't Walk" or the symbols of a walking person, symbolizing "Walk", or an upraised hand, symbolizing "Don't Walk" are in place, such signals must indicate as follows:

1. "Walk": Pedestrians facing such signal indication may proceed across the roadway in the direction of the signal indication and must be given the right of way by the drivers of all vehicles.

2. "Don't Walk" (steadily illuminated): ~~No~~ A pedestrian may not start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed crossing on the walk signal shall proceed to a sidewalk or safety island while the "Don't Walk" signal is showing indication.
3. "Don't Walk" (flashing): A pedestrian may not start to cross the roadway in the direction of the indication, but any pedestrian who has partially completed a crossing during the "Walk" signal must proceed in the direction of the indication to a sidewalk or safety island.

SECTION 3. AMENDMENT. Section 39-10-07 of the North Dakota Century Code is amended and reenacted as follows:

39-10-07. Flashing signals.

1. Whenever an illuminated flashing red or yellow light is used in a traffic signal or with a traffic sign, it requires obedience by vehicular traffic as follows:
 - a. Flashing red (stop ~~signal~~ indication). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.
 - b. Flashing yellow (caution ~~signal~~ indication). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such ~~signal~~ indication only with caution.
 - c. Flashing red arrow and flashing yellow arrow indications have the same meaning as the corresponding flashing circular indications, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.
2. This section does not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings is governed by the requirements set forth in section 39-10-41.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 350**HOUSE BILL NO. 1416**

(Representative Grosz)

EMERGENCY VEHICLE OPERATION

AN ACT to amend and reenact section 39-10-26 of the North Dakota Century Code, relating to the operation of emergency vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-26 of the North Dakota Century Code is amended and reenacted as follows:

39-10-26. Operation of vehicle on approach of authorized emergency vehicle.

1. Upon the immediate approach of an authorized emergency vehicle ~~giving an audible signal by bell, siren, or exhaust whistle and~~ displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in ~~such~~ that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. Whenever an emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer.
3. This section does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 351

HOUSE BILL NO. 1405

(Representatives Devlin, Byerly, Carlson)
(Senators O'Connell, Redlin)

MANUFACTURED BUILDING MOVING AND ELECTRICAL CERTIFICATE APPLICATIONS

AN ACT to amend and reenact sections 39-12-02 and 43-09-21 of the North Dakota Century Code, relating to applications for moving and electrical certificates for manufactured buildings and modular units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁵ SECTION 1. AMENDMENT. Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for any person to violate any of the terms or conditions of the permit. All permits for the movement of excessive size and weight on state highways must be for single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.
3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state

²⁵⁵ Section 39-12-02 was also amended by section 1 of House Bill No. 1065, chapter 352.

highway fund for use in the construction and maintenance of highways and operating expenses of the department of transportation. Official or publicly owned vehicles may not be required to pay charges for permits. The minimum fee for selected charges is as follows:

- a. The fee for a seasonal permit, harvest and wintertime, is fifty dollars per month.
 - b. The fee for a non-self-issuing interstate permit is ten dollars per trip.
 - c. The fee for special mobile equipment is twenty-five dollars per trip.
 - d. The fee for engineering is twenty-five dollars per trip.
 - e. The fee for filing a permit is five dollars per trip.
 - f. The fee for a single trip permit is twenty dollars per trip.
3. 4. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

SECTION 2. AMENDMENT. Section 43-09-21 of the North Dakota Century Code is amended and reenacted as follows:

43-09-21. Standards for electrical wiring and equipment. All electrical wiring, apparatus, or equipment ~~shall~~ must comply with the rules of the board made under authority of the laws of this state and in conformity with the approved methods of construction for safety to life and property. The regulations ~~laid down~~ in the national electrical code and the national electrical safety code as approved by the American national standards institute ~~shall be~~ are prima facie evidence of ~~such~~ these approved methods. Any municipality may make more stringent requirements. ~~No~~ An electrical installation ~~shall~~ may not be connected for use until proof has been furnished to the person, firm, corporation, or limited liability company supplying electrical energy that ~~such~~ there is compliance with the applicable regulations have been complied with. The manufacturer of a new manufactured building or modular unit shall make any changes required for the proof within fourteen days from the notice that the building or unit does not comply with the applicable regulations. This section does not apply to the movement of a new manufactured building or modular unit into or within this state before the process of being connected for use.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 352

HOUSE BILL NO. 1065

(Representative Froseth)

GRAIN CLEANER WIDTH, HEIGHT, AND WEIGHT EXEMPTIONS

AN ACT to amend and reenact subdivision a of subsection 2 of section 39-12-02 and subdivision d of subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to an exemption from width, height, and weight limitations for commercial portable grain cleaners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁶ **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. The fee for a ~~seasonal permit~~ the ten percent weight exemption, harvest and wintertime, is fifty dollars per month.

SECTION 2. AMENDMENT. Subdivision d of subsection 1 of section 39-12-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit,

²⁵⁶ Section 39-12-02 was also amended by section 1 of House Bill No. 1405, chapter 351.

however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

Approved March 16, 1999

Filed March 16, 1999

CHAPTER 353

HOUSE BILL NO. 1229

(Representatives Gorder, Herbel)
(Senator Tallackson)

VEHICLE WEIGHT LIMITATIONS

AN ACT to amend and reenact section 39-12-05.3 of the North Dakota Century Code, relating to weight limitations for vehicles on highways that are not in the interstate system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

39-12-05.3. Weight limitations for vehicles on highways other than the interstate system. A person may not operate on a highway, which is not part of the interstate system, any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all

roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 354

SENATE BILL NO. 2158

(Transportation Committee)

(At the request of the Department of Transportation)

TOURIST-ORIENTED DIRECTIONAL 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 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 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 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~~ A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.
4. The permit applicant shall 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~~ A tourist-oriented directional sign may not be erected unless it is erected in compliance with rules adopted by the department for such signs.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 355

HOUSE BILL NO. 1389

(Representatives Clark, Pollert)

MOTOR VEHICLE OPERATOR RECORDS RELEASE

AN ACT to amend and reenact section 39-16-03 of the North Dakota Century Code, relating to release of motor vehicle operator records; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16-03 of the North Dakota Century Code is amended and reenacted as follows:

39-16-03. ~~Abstract~~ Driving records - Not admissible in evidence - Fee.

1. The director upon request shall furnish any person a certified abstract of the operating record of any person, source document therefor, or record of clearance, subject to ~~the provisions of this chapter which title.~~ The abstract must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except the subject of the record and law enforcement or judicial officers functioning in their official capacity, requesting the abstract, source documents in aggregate form, or record of clearance shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the ~~abstract~~ record.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident. Upon request and subject to the provisions of this title, the director shall furnish an operating record or complete operating record to the subject of the record or to law enforcement or judicial officers.

2. A fee of three dollars must be paid for each abstract of any operating record, operating record, complete operating record, or record of clearance, and a reasonable fee must be paid for each source document, except no fee ~~will~~ may be assessed to law enforcement agencies or judicial officers. The director shall send an additional copy of the abstract, source document if requested in aggregate form, or record of clearance to the driver whose ~~abstract record~~ was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the ~~abstract record,~~ and providing the reason for the request. No additional copy of the abstract or ~~statement~~ record of clearance may be sent to a driver ~~where~~ if the request for the ~~driver's abstract record~~ was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions or judicial officer.

3. A requester may provide the department with a list of names of drivers and may request any source documents from the department relating to the listed drivers for a set time period. The department shall provide this information in hard copy or electronic format. If in order to provide the information by electronic format the department sets up a computer program, the department may charge a requester a reasonable charge for a setup fee. This charge may not exceed the actual cost to set up the computer program. A requester of source documents in aggregate form shall pay the director a reasonable fee for making and mailing to the driver whose record was requested an additional copy of the document as it relates to that driver.

SECTION 2. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

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

Approved April 8, 1999

Filed April 8, 1999

CHAPTER 356

SENATE BILL NO. 2403

(Senators Klein, Cook, O'Connell, B. Stenehjem)
(Representatives Lemieux, Schmidt)

DRIVER RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 39-16-03.1 of the North Dakota Century Code, relating to the confidentiality of a driver record or abstract.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-16-03.1. Entries on driver record abstract more than three years old confidential. Notwithstanding any other ~~provisions~~ provision of this chapter, ~~no~~ the following entries on a driver record or abstract are not available to the public, except for statistical purposes, other than by order of a court of competent jurisdiction accompanied by a fee of twenty-five dollars:

1. An entry more than three years old ~~or~~.
2. After the period of suspension ceases, an entry concerning a suspension under subsection 4, 5, 6, or 7 of section 39-06-03; or subsection 2, 5, or 6 of section 39-06-32; after the suspension ceases, on a driver record or abstract shall be available to the public, except for statistical purposes, other than by order of a court of competent jurisdiction. The order must be accompanied by a fee of twenty-five dollars.
3. An entry concerning a suspension as the result of a person under twenty-one years of age who has an alcohol concentration of at least two one-hundredths of one percent but under ten one-hundredths of one percent by weight within two hours after driving or being in actual physical control of a vehicle.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 357

HOUSE BILL NO. 1375

(Representatives Delmore, Nicholas, Warner)
(Senators Kinnoin, St. Aubyn, Wardner)

PARK MODEL TRAILERS

AN ACT to create and enact section 39-18-03.2 of the North Dakota Century Code, relating to park model trailer fees; to amend and reenact subsection 2 of section 57-40.3-01 and subsection 2 of section 57-55-10 of the North Dakota Century Code, relating to park model trailers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 39-18-03.2 of the North Dakota Century Code is created and enacted as follows:

39-18-03.2. Park model trailer fee. The owner of a park model trailer, as defined in subsection 2 of section 57-55-10, shall pay the department a fee of twenty dollars per calendar year to qualify for the exemption under section 57-55-10. The department shall issue a receipt for payment of the fee under this section but payment of the fee does not confer any rights to the owner of a park model trailer which are not otherwise provided by law. Fees collected under this section must be deposited in the highway tax distribution fund.

²⁵⁷ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.3-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled and every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, park model trailer as defined in subsection 2 of section 57-55-10, all-terrain vehicle, snowmobile, and travel trailer for which a certificate of title is required to be obtained ~~pursuant to the provisions of~~ under chapter 39-05, but not including housetrailers, or mobile homes.

SECTION 3. AMENDMENT. Subsection 2 of section 57-55-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~The provisions of this~~ This chapter ~~shall~~ does not apply to a mobile home ~~which~~ that:

²⁵⁷ Section 57-40.3-01 was also amended by section 2 of House Bill No. 1216, chapter 361.

- a. Is used only for the temporary living quarters of the owner or other occupant while ~~such~~ the person is engaged in recreational or vacation activities, provided that such the unit displays:
- (1) Displays a current travel trailer license; or
 - (2) Is a park model trailer that is used only for seasonal or recreational living quarters and not as a primary residence, and which is located in a trailer park or campground, and for which the owner has paid a park model trailer fee under section 39-18-03.2. For purposes of this paragraph, "park model" trailer means a recreational vehicle not exceeding forty feet [12.19 meters] in length which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use, is built on a single chassis, is mounted on wheels, has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode, and is certified by the manufacturer as complying with American national standards institute standard A119.5.
- b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to the ground.
- c. Is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the land on which such mobile home is located.
- d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 358

SENATE BILL NO. 2345

(Senator W. Stenehjem)
(Representative Delmore)

DRIVING UNDER THE INFLUENCE BLOOD TESTS

AN ACT to amend and reenact section 20.1-13.1-03, subsection 8 of section 20.1-13.1-10, sections 20.1-13.1-13, 20.1-15-03, subsection 10 of section 20.1-15-11, sections 20.1-15-14, 39-20-02, subsection 10 of section 39-20-07, sections 39-20-12, 39-24.1-03, subsection 8 of section 39-24.1-08, and section 39-24.1-11 of the North Dakota Century Code, relating to blood tests for driving while under the influence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The state toxicologist shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

²⁵⁸ **SECTION 2. AMENDMENT.** Subsection 8 of section 20.1-13.1-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A signed statement from the ~~nurse or medical technician~~ drawing individual medically qualified to draw the blood sample for testing as set

²⁵⁸ Section 20.1-13.1-10 was also amended by section 37 of House Bill No. 1275, chapter 278.

forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of ~~such~~ this evidence may be required.

SECTION 3. AMENDMENT. Section 20.1-13.1-13 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-13. Liability. Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

SECTION 4. AMENDMENT. Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-03. Persons qualified to administer chemical test and opportunity for additional test. Only a ~~physician, or a qualified technician, chemist, or registered nurse~~ an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The state toxicologist shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a ~~physician, or a qualified technician, chemist, registered nurse, or other qualified person~~ an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

²⁵⁹ **SECTION 5. AMENDMENT.** Subsection 10 of section 20.1-15-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10. A signed statement from the ~~nurse or medical technician drawing~~ individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of ~~such~~ this evidence may be required.

SECTION 6. AMENDMENT. Section 20.1-15-14 of the North Dakota Century Code is amended and reenacted as follows:

²⁵⁹ Section 20.1-15-11 was also amended by section 39 of House Bill No. 1275, chapter 278.

20.1-15-14. Liability. Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

SECTION 7. AMENDMENT. Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

39-20-02. Persons qualified to administer test and opportunity for additional test. Only a ~~physician, or a qualified technician, chemist, or registered nurse~~ an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content therein. The state toxicologist shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of breath, saliva, or urine specimen. The person tested may have a ~~physician, or a qualified technician, chemist, registered nurse, or other qualified person~~ an individual of the person's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional test by a person does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency ~~which~~ that administered the test or tests.

²⁶⁰ **SECTION 8. AMENDMENT.** Subsection 10 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

10. A signed statement from the ~~nurse or medical technician drawing~~ individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of ~~such~~ this evidence may be required.

SECTION 9. AMENDMENT. Section 39-20-12 of the North Dakota Century Code is amended and reenacted as follows:

39-20-12. Liability. Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of said act except for gross negligence.

SECTION 10. AMENDMENT. Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

²⁶⁰ Section 39-20-07 was also amended by section 63 of House Bill No. 1275, chapter 278.

39-24.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only a ~~physician, or a qualified technician, chemist, or registered nurse~~ an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug, or combination thereof, content of the blood. The state toxicologist shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a ~~physician, or a qualified technician, chemist, registered nurse, or other qualified person~~ an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the chemical test.

²⁶¹ **SECTION 11. AMENDMENT.** Subsection 8 of section 39-24.1-08 of the North Dakota Century Code is amended and reenacted as follows:

8. A signed statement from the ~~nurse or medical technician drawing~~ individual medically qualified to draw the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of ~~such~~ this evidence may be required.

SECTION 12. AMENDMENT. Section 39-24.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-24.1-11. Liability. Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

Approved March 16, 1999
Filed March 16, 1999

²⁶¹ Section 39-24.1-08 was also amended by section 64 of House Bill No. 1275, chapter 278.

CHAPTER 359**SENATE BILL NO. 2357**
(Senator Christmann)**SNOWMOBILE OPERATION**

AN ACT to amend and reenact subdivision g of subsection 5 of section 39-24-09 of the North Dakota Century Code, relating to prohibited operation of snowmobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 5 of section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. Upon any private land where the private land is posted by the owner or tenant 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 the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of ~~such~~ signs at or on all gates through ~~such~~ the fence or enclosure ~~must be construed to be constitutes~~ a posting of all ~~such~~ the enclosed lands.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 360

HOUSE BILL NO. 1215

(Representatives Grande, Belter)
(Senators Lyson, B. Stenehjem)

ALL-TERRAIN VEHICLES

AN ACT to amend and reenact subsection 1 of section 39-29-01 of the North Dakota Century Code, relating to all-terrain vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-29-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270.00 millimeters] or less in width, having a dry weight of ~~six hundred~~ one thousand pounds [~~272.15~~ 453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 361

HOUSE BILL NO. 1216

(Representatives Grande, Bernstein, Koppelman)
(Senators Fischer, Flakoll, D. Mathern)

LOW-SPEED VEHICLES

AN ACT to create and enact a new chapter to title 39 of the North Dakota Century Code, relating to low-speed vehicles; to amend and reenact section 57-40.3-01 of the North Dakota Century Code, relating to the motor vehicle excise tax; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶² **SECTION 1.** A new chapter to title 39 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers] and may not exceed one thousand five hundred pounds [680.39 kilograms] in unloaded weight.
2. "Operate" means to ride in or on and control the operation of a low-speed vehicle.
3. "Register" means the act of assigning a registration number to a low-speed vehicle.

Applicability. A low-speed vehicle is a motor vehicle under this title, except:

1. Chapter 39-22 does not apply to low-speed vehicles.
2. Registration of a low-speed vehicle is governed by this chapter.
3. A political subdivision may not require licensing or registration of low-speed vehicles.
4. The governing body of a city may regulate, restrict, or prohibit the use of low-speed vehicles operating in the city limits in areas under the jurisdiction of the city.

Low-speed vehicle registration - Application - Issuance - Fees - Renewal.

²⁶² Section 39-29.1-08 was amended by section 7 of Senate Bill No. 2161, chapter 330.

1. An individual may not operate a low-speed vehicle unless the vehicle has been registered in accordance with this chapter.
2. The department shall design and furnish an application that must be used to register a low-speed vehicle. The registration must state the name and address of every owner of the low-speed vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
3. On receipt of an application and the appropriate fee, the department shall register the low-speed vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
4. The fee for registration of a low-speed vehicle is twenty dollars for each registration cycle of two years ending on March thirty-first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
5. To renew a registration, the owner of a low-speed vehicle shall follow the procedure adopted by the department and pay the registration fee.
6. The department may adopt rules for the registration of low-speed vehicles and the display of registration numbers.

Low-speed vehicle dealers. A low-speed vehicle dealer does not need a motor vehicle dealer's license. Upon application and on payment of a twenty dollar fee, a low-speed dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's numbers may be used only on low-speed vehicles owned by the dealership.

Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. A low-speed vehicle owned and used by the United States or another state or its political subdivisions.
 - b. A low-speed vehicle registered in a foreign country and temporarily used in this state.
 - c. A low-speed vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.
 - d. A low-speed vehicle used exclusively for work on private agricultural land or on an industrial jobsite on private land.
2. A low-speed vehicle owned by this state or any of its political subdivisions are exempt from registration fees for low-speed vehicles.

Transfer or termination of low-speed vehicle ownership - Change of address of owner. Within fifteen days of a transfer of any ownership interest in a low-speed vehicle, other than a security interest, the destruction or abandonment of any

low-speed vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the last registered owner to the director in the form the director requires.

Rules of operation. A person may not operate a low-speed vehicle on a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour. The operator of a low-speed vehicle may make a direct crossing of a highway on which the speed limit exceeds thirty-five miles [56.33 kilometers] per hour if the crossing is made so the operator can continue on a highway on which the speed limit does not exceed thirty-five miles [56.33 kilometers] per hour.

Equipment. A low-speed vehicle must be equipped with head lamps, front and rear turn signal lamps, tail lamps, stop lamps, reflex reflectors on each side as far to the rear of the vehicle as practicable and one red reflector on the rear, four-wheel hydraulic assist brakes, a parking brake, a windshield, a vehicle identification number, a safety belt installed at each designated seating position, an exterior mirror mounted on the operator's side of the vehicle, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rear view mirror.

Penalty. A violation of this chapter for which there is no civil or criminal penalty in this title is a class B misdemeanor.

²⁶³ **SECTION 2. AMENDMENT.** Section 57-40.3-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.3-01. Definitions. ~~The following words, terms, and phrases, when As~~ used in this chapter, ~~shall have the meaning ascribed to them in this section,~~ except where the context clearly indicates a different meaning:

1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of six hundred pounds [272.15 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.
2. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers per hour] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers per hour] and may not exceed one thousand five hundred pounds [680.39 kilograms] in unloaded weight.
3. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled and every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, all-terrain vehicle, snowmobile, low-speed vehicle, and travel trailer for which a certificate of title is required to be obtained pursuant

²⁶³ Section 57-40.3-01 was also amended by section 2 of House Bill No. 1375, chapter 357.

to the provisions of chapter 39-05, but not including housetrailers, or mobile homes.

3. 4. "Person" includes any individual, firm, partnership, joint adventure, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
4. 5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for said loss. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into his service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value if the new vehicle is properly registered and licensed. "Purchase price" in those instances where the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" in those instances where a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured costs mean the reasonable value of the completed motor vehicle.
5. 6. "Purchaser" means any person owning or in possession of a motor vehicle who makes application to the director of the department of transportation for registration plates or a certificate of title for such vehicle.
6. 7. "Registrar" means the director of the department of transportation of this state as provided by section 24-02-01.3, and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter.

- ~~7.~~ 8. "Sale", "sells", "selling", "purchase", "purchased", or "acquired" includes any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration.
- ~~8.~~ 9. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
- ~~9.~~ 10. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.
- ~~40.~~ 11. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
- ~~44.~~ 12. "Travel trailer" means a mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.
- ~~42.~~ 13. "Use" means the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
- ~~43.~~ 14. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

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

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 362

SENATE BILL NO. 2438

(Senator Mutch)

(Approved by the Delayed Bills Committee)

FEDERAL HOURS OF SERVICE EXEMPTIONS

AN ACT to amend and reenact section 39-32-02 of the North Dakota Century Code, relating to interstate exemptions from federal hours of service provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-32-02 of the North Dakota Century Code is amended and reenacted as follows:

39-32-02. Intrastate exemptions from federal hours of service provisions.

1. The following intrastate drivers are not subject to hours of service limitations:
 - a. A driver of an authorized emergency vehicle.
 - b. A driver who operates a motor vehicle that has a manufacturer's gross vehicle weight rating equal to or less than twenty-six thousand pounds [11793.40 kilograms] and that is not transporting hazardous materials.
 - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
 - a. More than twelve hours following eight consecutive hours off duty.
 - b. For any period after having been on duty more than fifteen hours.
 - c. After having been on duty for seventy hours in any period of seven consecutive days ~~unless operating within an area having a one hundred fifty air-mile radius from the driver's home post office or a one hundred fifty air-mile radius from the official worksite of the vehicle if:~~
 - ~~(1) The driver returns to the work reporting location and is released within twelve consecutive hours.~~
 - ~~(2) At least eight consecutive hours off duty separate each twelve hours on duty.~~
 - ~~(3) The driver does not exceed twelve hours maximum driving time following eight consecutive hours off duty.~~

- (4) The person that employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.
3. Following twenty-four consecutive hours off, an intrastate driver begins a new seven-consecutive-day period and on-duty time is reset to zero.
 4. Hours of service limitations do not apply to an intrastate driver when transporting property or passengers during a declared emergency. The employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. An employer shall maintain documentation for one year and shall make it available upon request of a law enforcement officer. Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.
 5. a. An intrastate driver; ~~except for a driver salesperson, is released from~~ is exempt from maintaining a record of duty each day, total hours on duty each day, and total time for the preceding seven days recordkeeping requirements status if:
 - (1) a. The driver operates within a one hundred fifty air-mile radius of the ~~normal work reporting location, returns to the work reporting location, and is released from work within twelve consecutive hours~~ the driver's normal work reporting location or from the official worksite of the vehicle;
 - (2) b. The driver has At least eight consecutive hours off duty ~~separating~~ separate each twelve hours on duty;
 - (3) c. The driver ~~does not exceed the,~~ except for a driver salesperson, returns to the work reporting location and is released from work within twelve hours maximum driving time following eight consecutive hours off duty; and
 - (4) d. The motor carrier maintains and retains for a period of six months ~~accurate and true records of the time records showing the time~~ the driver reports for duty and is released from duty each day.
 - b. An intrastate driver under subdivision a shall comply with the ~~seventy-hour per seven-day limit and shall keep track of the total time for the preceding seven days.~~

MUNICIPAL GOVERNMENT

CHAPTER 363

SENATE BILL NO. 2198

(Senators Cook, Wardner)
(Representatives Glassheim, Timm)

HOME RULE CHARTERS

AN ACT to amend and reenact sections 40-05.1-05 and 40-05.1-07 of the North Dakota Century Code, relating to the filing of copies of a new home rule charter and amendment or repeal of city home rule charters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁴ **SECTION 1. AMENDMENT.** Section 40-05.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-05.1-05. Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter. If a majority of the qualified voters voting on the charter at the election ~~shall~~ vote in favor of the home rule charter it ~~shall be deemed to be~~, the charter is ratified and shall become is the organic law of ~~such~~ the city, and ~~extend~~ extends to all its local and city matters. ~~Such~~ The charter and the ordinances made pursuant ~~thereto~~ to the charter in such matters ~~shall~~ supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict ~~therewith~~ with the charter and ordinances, and ~~shall~~ must be liberally construed for such purposes. One copy of the charter ~~so~~ ratified and approved ~~shall~~ must be filed with the secretary of state; ~~one with the clerk of district court for the county in which the city is located~~; and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

SECTION 2. AMENDMENT. Section 40-05.1-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-05.1-07. Amendment or repeal. The home rule charter adopted by any city may be amended or repealed by proposals submitted to and ratified by the qualified electors of the city in the same general manner provided in section 40-05.1-02 and section 40-05.1-04 for the adoption of ~~such~~ the charter. Amendments may be proposed by the governing body of the city or by petition of the number of electors provided in section 40-05.1-02 and submitted to the voters at the same election. The voters may at their option accept or reject any or all of ~~such~~ the amendments by a majority vote of qualified electors voting on the question at the election. A proposal to repeal a home rule charter that has been adopted ~~shall~~ must likewise be submitted to the electors of the city as set forth in this section. One copy

²⁶⁴ Section 40-05.1-05 was also amended by section 66 of House Bill No. 1275, chapter 278.

of a ratified amendment or a repeal of a home rule charter must be filed with the secretary of state and one with the city auditor. Upon proper filing of the amendment or repeal, the courts shall take judicial notice of the amendment or repeal.

Approved March 16, 1999

Filed March 16, 1999

CHAPTER 364**HOUSE BILL NO. 1318**

(Representatives Grosz, Dorso, Poolman)
(Senators Heitkamp, Wardner)

HOME RULE CITY INCOME TAX PROHIBITED

AN ACT to amend and reenact subsection 2 of section 40-05.1-06 of the North Dakota Century Code, relating to removal of authority of home rule cities to impose income taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 40-05.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. To control its finances and fiscal affairs; to appropriate money for its purposes, and make payment of its debts and expenses; to levy and collect taxes, excises, fees, charges, and special assessments for benefits conferred, for its public and proprietary functions, activities, operations, undertakings, and improvements; to contract debts, borrow money, issue bonds, warrants, and other evidences of indebtedness; to establish charges for any city or other services, and to establish debt and mill levy limitations, provided that all real and personal property in order to be subject to the assessment provisions of this subsection shall be assessed in a uniform manner as prescribed by the state board of equalization and the state supervisor of assessments. The authority to levy taxes under this subsection does not include authority to impose income taxes.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 365**HOUSE BILL NO. 1235**

(Representative Klemin)

MUNICIPAL JUDGE CONTINUING EDUCATION

AN ACT to amend and reenact section 40-18-22 of the North Dakota Century Code, relating to continuing education for municipal judges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-18-22 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-18-22. Continuing education of municipal judge and alternate judge required. Each municipal judge and alternate judge shall ~~at least twice within one year after taking office, and at least twice each calendar year thereafter, attend and participate in an educational session designated for that purpose by the supreme court, unless the judge is excused from attendance~~ comply with continuing judicial education requirements established by the supreme court rule. The city shall reimburse the judge for necessary expenses of travel and subsistence as other city officials are so reimbursed.

If any judge fails to fulfill the requirements of this section, without being excused by the supreme court, the state court administrator shall report the judge's failure to the ~~commission on~~ judicial conduct commission for appropriate action.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 366

HOUSE BILL NO. 1247

(Representative Glasheim)

SPECIAL ASSESSMENT PROPERTY INSPECTION

AN ACT to amend and reenact section 40-23-07 of the North Dakota Century Code, relating to inspection of special assessment property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-23-07 of the North Dakota Century Code is amended and reenacted as follows:

40-23-07. Determination of special assessments by commission - Political subdivisions not exempt. Whenever the commission is required to make any special assessment under the provisions of this title, the members thereof personally shall inspect any and all lots and parcels of land which may be subject to such special assessment and commission shall determine from such inspection the particular lots and parcels of land which, in the opinion of the commission, will be especially benefited by the construction of the work for which the assessment is to be made. The commission shall determine the amount in which each of the lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made, and shall assess against each of such lots and parcels of land such sum, not exceeding the benefits, as shall be necessary to pay its just proportion of the total cost of such work, or of the part thereof which is to be paid by special assessment, including all expenses incurred in making such assessment and publishing necessary notices with reference thereto and the per diem of the commission. However, as an alternative to the procedure heretofore provided in this section, the special assessment commission may, in its discretion, determine and allocate the cost of special assessments in accordance with the method provided for in chapter 40-23.1. Benefited property belonging to counties, cities, school districts, park districts, and townships, shall not be exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law. Nothing in this section shall be deemed to amend other provisions of law with reference to the levy of assessments on property sold for delinquent taxes.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 367

SENATE BILL NO. 2290

(Senators Lee, Fischer, Kroeplin)
(Representatives Devlin, Koppang, Koppelman)

EXTRATERRITORIAL ZONING

AN ACT to amend and reenact section 40-47-01.1 of the North Dakota Century Code, relating to extraterritorial zoning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-47-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-47-01.1. Extraterritorial zoning - Mediation - Determination by administrative law judge.

1. A city may, by ordinance, extend the application of a city's zoning regulations to any quarter quarter section of unincorporated territory if a majority of the quarter quarter section is located within the following distance of the corporate limits of the city:
 - a. One mile [1.61 kilometers] if the city has a population of less than five thousand.
 - b. Two miles [3.22 kilometers] if the city has a population of five thousand or more, but less than twenty-five thousand.
 - c. Four miles [6.44 kilometers] if the city has a population of twenty-five thousand or more.
2. If a quarter quarter section line divides a platted lot and the majority of that platted lot lies within the quarter quarter section, a city may apply its extraterritorial zoning authority to the remainder of that platted lot. If the majority of the platted lot lies outside the quarter quarter section, the city may not apply its extraterritorial zoning authority to any of that platted lot.
3. A city exercising its extraterritorial zoning authority shall hold a zoning transition meeting if the territory to be extraterritorially zoned is currently zoned. The city's zoning or planning commission shall provide at least fourteen days' notice of the meeting to the zoning board or boards of all political subdivisions losing their partial zoning authority. The purpose of the zoning transition meeting is to review existing zoning rules, regulations, and restrictions currently in place in the territory to be extraterritorially zoned and to plan for an orderly transition. The zoning transition meeting must take place before the city's adoption of an ordinance exercising extraterritorial zoning.
4. If two or more cities have boundaries at a distance where there is an overlap of extraterritorial zoning authority under this section, the governing bodies of the cities may enter into an agreement regarding the

extraterritorial zoning authority of each city. The agreement must be for a specific term and is binding upon the cities unless the governing bodies of the cities agree to amend or rescind the agreement or unless determined otherwise by an administrative law judge in accordance with this chapter. If a dispute arises concerning the extraterritorial zoning authority of a city and the governing bodies of the cities involved fail to resolve the dispute, the dispute must be submitted to a committee for mediation. The committee must be comprised of one member appointed by the governor, one member of the governing body of each city, and one member of the planning commission of each city who resides outside the corporate city limits. The governor's appointee shall arrange and preside over the meeting and act as mediator at the meeting. A meeting may be continued until the dispute has been resolved or until the mediator determines that continued mediation is no longer worthwhile.

4. 5. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection 3 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:
- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
 - b. The proximity of the land in dispute to the corporate limits of each city involved;
 - c. The proximity of the land in dispute to developed property in the cities involved;
 - d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
 - e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
 - f. The growth pattern of the cities involved in the dispute; and

- g. Any other factor determined to be relevant by the administrative law judge.
- ~~5.~~ 6. For purposes of this section, the population of a city must be determined by the last official regular or special federal census. If a city has incorporated after a census, the population of the city must be determined by a census taken in accordance with chapter 40-22.
- ~~6.~~ 7. When a portion of the city is attached to the bulk of the city by a strip of land less than one hundred feet wide, that portion and strip of land must be disregarded when determining the extraterritorial zoning limits of the city. This subsection does not affect the ability of a city to zone land within its city limits.
- ~~7.~~ 8. For the purposes of this section, a quarter quarter section shall be determined in the manner provided by 2 Stat. 313 [43 U.S.C. 752]. When appropriate, the phrase "quarter quarter section" refers to the equivalent government lot.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 368

SENATE BILL NO. 2051

(Legislative Council)
(Taxation Committee)

PROPERTY TAX EXEMPTION DECISIONS FOR NEW INDUSTRIES

AN ACT to amend and reenact section 40-57.1-03 of the North Dakota Century Code, relating to inclusion of school board and township representatives in negotiations and deliberations on granting property tax exemptions or payments in lieu of taxes for new industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁵ **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project upon which initial construction is begun after June 30, 1994. The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of

²⁶⁵ Section 40-57.1-03 was also amended by section 1 of House Bill No. 1456, chapter 497.

payments in lieu of taxes due under this section in the following year. After receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

During the negotiation and deliberation of a property tax exemption or the option to make payments in lieu of taxes under this chapter, a municipality shall include, as nonvoting ex officio members of its governing body, a representative appointed by the school board of each school district affected by the proposed action and a representative appointed by the board of township supervisors of each township affected by the proposed action.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 369

HOUSE BILL NO. 1492

(Representatives Dorso, Clark, B. Thoreson)
(Senators Grindberg, G. Nelson)

RENAISSANCE ZONES

AN ACT to provide for renaissance zones in cities and to provide tax exemptions and credits for investments in renaissance zones; to create and enact a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to tax exemptions and credits for investments in renaissance zones; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 10 of this Act:

1. "Boundary" means the boundary established by vote of the city governing body and approved by the office of intergovernmental assistance.
2. "Development plan" means a written plan that addresses the criteria in subsection 1 of section 3 of this Act and includes the following:
 - a. A map of the proposed renaissance zone which indicates the geographic boundaries, the total area, and the present use and conditions of the land and structures within those boundaries.
 - b. A description of the existing physical assets, in particular natural or historical assets, of the zone and a plan for the incorporation and enhancement of the assets within the proposed development.
 - c. An outline of goals and objectives and proposed outcomes, including major milestones or benchmarks, by which to gauge success resulting from the designation of the zone.
 - d. A description of proposed projects including public and private investments, and the programming and planned events to support and enhance the projected investments.
 - e. A description of the promotion, development, and management strategies to maximize investment in the zone.
 - f. A plan for the promotion and use of the renaissance fund corporation, including commitments by one or more investors to the corporation, if such use is intended.
 - g. Evidence of community support and commitment from residential and business interests.
3. "Investor" means the individual, partnership, limited partnership, limited liability company, trust, or corporation making an investment in a renaissance fund corporation.

4. "Local zone authority" means the city or the entity designated by the city to promote, develop, and manage the zone and may include any nonprofit incorporated entity such as an economic development corporation, community development corporation, main street organization, or chamber of commerce.
5. "Original principal amount" means the funds invested in a renaissance fund corporation after designation of the renaissance zone and before the sunset of that zone.
6. "Taxpayer" means an individual, corporation, financial institution, or trust subject to the taxes imposed by chapter 57-35.3 or 57-38.
7. "Zone" means a renaissance zone proposed by a city and designated by the office of intergovernmental assistance.
8. "Zone project" means any project contained within a designated renaissance zone and approved for zone incentives by a majority vote of the city governing body or zone authority.

SECTION 2. Eligibility - Local zone authority designation. Any incorporated city may apply to the office of intergovernmental assistance to designate a portion of the city as a renaissance zone. Any individual, partnership, limited partnership, limited liability company, trust, or corporation may apply for a tax credit or exemption under sections 4 through 7 of this Act. The governing body of a city may designate a local zone authority to implement a development plan on behalf of the city.

SECTION 3. Renaissance zones.

1. A city may apply to the office of intergovernmental assistance to designate a portion of that city as a renaissance zone if the following criteria are met:
 - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.
 - b. The application includes a development plan.
 - c. The proposed renaissance zone is not more than twenty square blocks.
 - d. The proposed renaissance zone has a continuous boundary and all blocks are contiguous.
 - e. The proposed land usage includes both commercial and residential property.
 - f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years.
2. The office of intergovernmental assistance shall:
 - a. Review all applications for renaissance zone designation against the criteria established in this section and designate zones.

- b. Approve or reject the duration of renaissance zone status as submitted in an application.
 - c. Approve or reject the geographic boundaries and total area of the renaissance zone as submitted in an application.
 - d. Promote the renaissance zone program.
 - e. Monitor the progress of the designated renaissance zones against submitted plans in an annual plan review.
 - f. Report on renaissance zone progress to the governor and the legislative council on an annual basis until all designated zones expire.
3. The office of intergovernmental assistance shall consider the following criteria in designating a renaissance zone:
 - a. The viability of the development plan.
 - b. The incorporation and enhancement of unique natural and historic features into the development plan.
 - c. Whether the development plan is creative and innovative in comparison to other applications.
 - d. Public and private commitment to and other resources available for the proposed renaissance zone, including the provisions for a renaissance fund corporation.
 - e. How renaissance zone designation would relate to a broader plan for the community as a whole.
 - f. How the local regulatory burden, in particular that burden associated with the renovation of historic properties and that burden associated with mixed use development, will be eased for developers and investors in the renaissance zone.
 - g. The strategies for the promotion, development, and management of the zone, including the use of a local zone authority if designated.
 - h. Any other information required by the office.
4. The office of intergovernmental assistance may not designate a portion of a city as a renaissance zone unless, as a part of the application, the city provides a resolution from the governing body of the city that states if the renaissance zone designation is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 4 through 7 of this Act.
5. A city may not propose or be part of more than one renaissance zone.
6. A parcel of property may be exempted from property taxes under section 5 of this Act only once, but during the five taxable years of eligibility for that exemption, the property tax exemption transfers with the transfer of the property to a qualifying user. The ownership or lease

of, or investment in, a parcel of property may qualify for exemption or credit under section 4 of this Act only once, but during the five taxable years of eligibility for that exemption or credit, the exemption or credit under section 4 of this Act transfers with the transfer of the property to a qualified user and with respect to the year in which the transfer is made must be prorated for use of the property during that year.

SECTION 4. Income tax exemptions.

1. An individual taxpayer who purchases single-family residential property for the individual's primary place of residence as part of a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date of occupancy.
2. A business that purchases or leases property for any business purpose as part of a zone project is exempt from income tax for five taxable years beginning in the year of the investment or lease for income derived from the business locations within the zone.
3. An individual, partnership, limited partnership, limited liability company, trust, or corporation that purchases residential or commercial property as an investment as part of a zone project is exempt from any income tax for five taxable years resulting from income earned from that investment.
4. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapters 57-35.3 or 57-38.

SECTION 5. Property tax exemptions.

1. A municipality may grant a partial or complete exemption from ad valorem taxation on single-family residential property, exclusive of the land on which it is situated, located in a zone project if the property was purchased by an individual for the individual's primary place of residence. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition.
2. A municipality may grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements purchased by a business for any business purpose, excluding investment, as part of a zone project. An exemption granted under this subsection may not extend beyond five taxable years beginning in the year of the investment.
3. A municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements to residential or commercial property located in a zone project if the property was purchased solely for investment purposes. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition.

SECTION 6. Historic preservation and renovation tax credit. A credit against state tax liability as determined under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3 is allowed for investments in the historic preservation or

renovation of property within the renaissance zone if the investment is made between January 1, 2000, and December 31, 2004. The amount of the credit is fifty percent of the amount invested during the taxable year. Any excess credit may be carried forward for a period of up to five taxable years from the date of the investment.

SECTION 7. Renaissance fund corporation - Exemption from taxation.

1. Each city with a designated renaissance zone may establish a renaissance fund corporation, if the provisions for such a corporation are clearly established in the development plan and approved with the plan. The renaissance fund corporation may be a for-profit subsidiary of the local authority if one is designated.
2. The purpose of a renaissance fund corporation is solely to raise funds to be used to make investments in zone projects, and to provide financing to enterprise zone projects in a manner that will encourage capital investment in downtowns and central portions of cities, encourage the establishment or expansion of commercial businesses in downtowns and central portions of cities, and encourage the purchase of homes and encourage residency in the downtowns and central portions of cities.
3. A renaissance fund corporation may provide financing to zone projects, including projects undertaken by individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing. The amount of financing is not limited by this Act.
4. A renaissance fund corporation is exempt from any tax imposed by chapters 57-35.3 or 57-38. A corporation or financial institution entitled to the exemption provided by this subsection must file required returns and report income to the tax commissioner as required by the provisions of those chapters as if the exemption did not exist. If an employer, this subsection does not exempt a renaissance fund corporation from complying with the income tax withholding laws.
5. A credit against state tax liability as determined under sections 57-35.3-03, 57-38-29, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund corporation. The amount of the credit is fifty percent of the amount invested in the renaissance fund corporation during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.
6. The total amount of credits allowed under this section may not exceed, in the aggregate, two million five hundred thousand dollars for all taxpayers in all taxable years.
7. Income to a renaissance fund corporation derived from the sale or refinancing of zone properties financed wholly or in part by the corporation may be dispersed as annual dividends equal to the income, minus ten percent, derived from all sources and proportional to the investment. In the event of a loss to the fund resulting in a temporary diminishment of the fund below the original principal amount, no annual dividend may be paid until the fund is restored.

8. Income to a renaissance fund corporation derived from interest or the temporary investment of its funds in certificates of deposit, bonds, treasury bills, or securities may be used for administration.
9. If an investment in a renaissance fund corporation which is the basis for a credit under this section is redeemed by the investor within ten years of the date it is purchased, the credit provided by this section for the investment must be disallowed, and any credit previously claimed and allowed with respect to the investment must be paid to the tax commissioner with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the tax commissioner under this section, the amount collected must be handled in the same manner as if no credit had been allowed.
10. A renaissance fund corporation may invest in any housing, commercial, or infrastructure project in a zone project.
11. Each petition for investment must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation.

SECTION 8. Contributions - Use. A local zone authority shall use contributions received under sections 4, 5, 6, and 7 of this Act for the support of the renaissance zone, including promotion, development, and management of the zone.

SECTION 9. Rules and administration - Income tax secrecy exception. The tax commissioner shall administer sections 1 through 10 of this Act with respect to an income tax exemption or credit and has the same powers as provided under section 57-38-56 for purposes of sections 1 through 10 of this Act. The office of intergovernmental assistance, in cooperation with the tax commissioner, shall issue forms to a taxpayer who may be eligible for the income tax exemption or tax credit sufficient for the tax commissioner to monitor the use of any exemptions or credits received by a taxpayer. The secrecy provisions of section 57-38-57 do not apply to exemptions or credits received by taxpayers under sections 4, 6, and 7 of this Act, but only when a local zone authority inquires of the tax commissioner about exemptions or credits claimed under sections 4, 6, and 7 of this Act with regard to that local zone authority or to the extent necessary for the tax commissioner to administer the tax exemptions or credits.

SECTION 10. Pass-through of tax exemption or credit. A partnership, subchapter S corporation, limited partnership, limited liability company or any other pass-through entity that purchases or leases property in a renaissance zone for any business purpose, invests in a historic preservation or renovation of property within a renaissance zone, or invests in a renaissance fund corporation must be considered to be the taxpayer for purposes of any investment limitations in sections 4, 6, and 7 of this Act, and the amount of the exemption or credit allowed with respect to the entity's investments must be determined at the pass-through entity level. The amount of the total exemption or credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the pass-through entity.

²⁶⁶ **SECTION 11.** A new subsection to section 57-38-30.3 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the exemptions or credits provided under sections 4, 6, and 7 of this Act.

SECTION 12. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998, and does not apply to any investments or activities that occurred before January 1, 1999.

Approved April 8, 1999
Filed April 8, 1999

²⁶⁶ Section 57-38-30.3 was also amended by section 6 of Senate Bill No. 2009, chapter 31, and section 1 of House Bill No. 1113, chapter 512.

UNIFORM COMMERCIAL CODE

CHAPTER 370

HOUSE BILL NO. 1393

(Representatives Renner, Rennerfeldt, Nicholas)
(Senators D. Mathern, Wanzek)

FINANCING STATEMENT CONTINUANCE

AN ACT to amend and reenact subsection 1 of section 41-09-43 of the North Dakota Century Code, relating to termination statement requirements and the timing of a debtor's request to a secured creditor to continue a financing statement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 41-09-43 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases where there is no outstanding secured obligation and no written commitment between the secured party and the debtor to make advances, incur obligations, or otherwise give value, the secured party, unless requested by the debtor in writing to continue the filing, must send to each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement nor under the central notice system, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection 2 of section 41-09-44, including payment of the required fee, if any. If the affected secured party fails to file a termination statement as required by this subsection within sixty days of when the secured obligation is fully satisfied, and the debtor has not requested in writing that the filing be continued, then the secured party is liable to the debtor for one hundred dollars, and in addition, for any loss caused to the debtor by such failure. The debtor's written request for a filing to be continued may be made at any time and be effective under this section. If the affected secured party fails to file a termination statement within

ten days after proper written demand by the debtor, then the secured party is liable to the debtor for one hundred dollars, and in addition, for any loss caused to the debtor by such failure.

Approved March 19, 1999

Filed March 19, 1999

NUISANCES

CHAPTER 371

SENATE BILL NO. 2426

(Senator Christmann)

SPORT SHOOTING RANGE DEEMED NOT A NUISANCE

AN ACT to provide that the operation of sport shooting ranges may not be deemed a nuisance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Sport shooting range deemed not a nuisance. If a sport shooting range has been in operation for one year since the date on which it began operation as a sport shooting range, it does not become a public or private nuisance as a result of changed conditions in or around the locality of the sport shooting range. If a sport shooting range remains in compliance with noise control or nuisance abatement rules or ordinances in effect on the date on which it commenced operation, it is not subject to a civil or criminal action resulting from or relating to noise generated by the operation of the sport shooting range. A person who acquires title to real property that is adversely affected by the operation of a permanently located and improved sport shooting range constructed and initially operated before that person acquired title to the property adversely affected may not maintain a civil action on the basis of noise or noise pollution against the person who owns or operates the sport shooting range. A rule, resolution, or ordinance relating to noise control, noise pollution, or noise abatement adopted by the state or a political subdivision may not be applied to prohibit the operation of a sport shooting range, provided the conduct was lawful and being conducted before the adoption of the rule, resolution, or ordinance. Except as otherwise provided in this section, a political subdivision may regulate the location and construction of a sport shooting range after the effective date of this Act. Notwithstanding any other provision of law, a county or city enacting a home rule charter under chapter 11-09.1, 40-05.1, or 54-40.4 may not regulate a sport shooting range except as otherwise provided in this Act. As used in this Act, sport shooting range means an area designated and operated by a person for the sport shooting of firearms or any area so designated and operated by the state or a political subdivision, regardless of the terms for admission to the sport shooting range.

Approved March 18, 1999

Filed March 19, 1999

OCCUPATIONS AND PROFESSIONS

CHAPTER 372

HOUSE BILL NO. 1150

(Industry, Business and Labor Committee)
(At the request of the State Board of Accountancy)

PUBLIC ACCOUNTANCY PRACTICE

AN ACT to create and enact a new section to chapter 43-02.2 of the North Dakota Century Code, relating to substantial equivalency for obtaining a certificate or license to practice public accountancy; to amend and reenact sections 43-02.2-01, 43-02.2-02, 43-02.2-03, 43-02.2-04, 43-02.2-06, 43-02.2-07, 43-02.2-08, 43-02.2-09, 43-02.2-11, 43-02.2-12, 43-02.2-15, 43-02.2-16, and 43-02.2-17 of the North Dakota Century Code, relating to certified public accountants and the practice of public accountancy; and to repeal section 43-02.2-05 of the North Dakota Century Code, relating to individual permits to practice public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-02.2-01 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-01. Purpose. It is the policy of this state, and the purpose of this chapter, 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~~ their professional work. 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 2. AMENDMENT. Section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the state board of accountancy.

2. "Certificate" means a certificate as "certified public accountant" issued under section 43-02.2-04 or provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.
3. "Client" means a person or entity that agrees with a licensee to receive any professional service other than an employer-employee relationship.
4. "Firm" means a sole proprietorship, a corporation, a partnership, or any combination thereof, or any other entity permitted by law.
4. ~~5.~~ "Licensee" means the holder of a certificate, license, or permit issued under ~~section 43-02.2-04~~, a permit issued under ~~section 43-02.2-05 or 43-02.2-06~~, or a certificate or permit issued under this chapter or prior law.
5. ~~6.~~ "Permit" means a permit to practice public accountancy issued under ~~section 43-02.2-05 or 43-02.2-06~~ or 43-02.2-07, prior law, or corresponding provisions of the laws of other states.
6. ~~7.~~ "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~~ but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a firm with a permit issued under section 43-02.2-06 or 43-02.2-07.
7. ~~8.~~ "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.
9. "Professional" means arising out of or related to the specialized knowledge or skills associated with certified public accountants or licensed public accountants.
8. ~~10.~~ "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. 11. "Rule" means any rule, regulation, or other written directive of general application duly adopted by the board.
40. 12. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, and Guam.
13. "Substantial equivalency" is a determination by the board or its designee that another jurisdiction's education, examination, and experience requirements are comparable to or exceed that of the uniform accountancy act, or that an individual's education, examination and experience qualifications are comparable to or exceed that of the uniform accountancy act.

SECTION 3. AMENDMENT. Section 43-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-03. 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~~ permits, 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 to properly qualified applicants and ~~licenses~~ permits to properly qualified ~~accountants~~ firms.
 - 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 chapter. 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, to cooperate with appropriate authorities in other states in investigations and enforcement concerning violations of this chapter and comparable laws of other states, 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 responsibilities.
 - 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 and experience qualifications required for the issuance of certificates under this chapter and the continuing ~~professional~~ education required for renewal of certificates and ~~permits~~ licenses;
 - (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 chapter, of the titles "certified public accountant", "CPA", "licensed public accountant", and "LPA";
 - (7) Rules concerning substantial equivalency;
 - (8) Rules regarding practice reviews that may be required to be performed under this chapter; and
 - ~~(8)~~ (9) Other rules the board deems necessary or appropriate for implementing this chapter.

SECTION 4. AMENDMENT. Section 43-02.2-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any ~~resident~~ person of good moral character who meets the requirements of this section.
2. ~~The board may refuse to grant a certificate on the grounds~~ For the purposes of this chapter, good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.
3. The board shall 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; and
 - c. ~~The applicant meets the requirements of section 43-02.2-05, 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 moral character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education ~~or~~ and 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; and
 - e. Has paid the applicable fees; and
 - f. ~~Meets the requirements of section 43-02.2-05, 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~~ and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.
 - b. After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree or their equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.

6. The ~~examinations~~ examination 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~~ examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination.
7. An applicant must pass ~~all sections of~~ the examination provided for in subsection 6, as specified by rule, 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~~ under 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~~ designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized ~~professional~~ accounting designation by another state or jurisdiction.
14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. As an alternative to the requirements of subsection 3, the board shall issue a certificate to an individual who holds a certificate from another state, who establishes the individual's principal place of business within this state and has submitted the applicable application and fees, provided that the individual or the other state has attained substantial equivalency.

SECTION 5. AMENDMENT. Section 43-02.2-06 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-06. Permits to practice - Firms.

1. ~~Each firm that engages in the practice of public accounting~~ A firm must hold a firm permit issued by the board, in order to practice public accounting or to use the titles "CPAs", "LPAs", "CPA firm", "LPA firm", or similar titles. The board shall grant or renew permits to practice

public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.

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 43-02.2-05 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 notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to licensees of a state or other recognized jurisdiction and that all certified public accountants or licensed public accountants associated with the firm whose principal place of business is in this state and who perform professional services in this state hold a valid certificate or license issued by this state. The firm and its owners must comply with all board rules regarding ownership.~~
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 43-02.2-05 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~~ jurisdiction.
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 6. AMENDMENT. Section 43-02.2-07 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-07. Licensed public accountants and firms of public accountants.

Persons ~~and firms~~ who on the effective date of this Act ~~chapter~~ hold ~~registrations as licensed public accountants~~ accountant licenses issued under prior law of this state are entitled to have ~~permits to practice granted and those licenses renewed under sections 43-02.2-05 and 43-02.2-06~~ provided that they fulfill all requirements for renewal under ~~those provisions~~ this section and subsections 13 and 15 of section 43-02.2-04. ~~If such Firm~~ licensees that hold valid permits to practice ~~under sections 43-02.2-05 and 43-02.2-06,~~ 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 firm permits must be renewed annually, with renewal subject to payment of fees and any other requirements prescribed by the board.

SECTION 7. AMENDMENT. Section 43-02.2-08 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-08. 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 43-02.2-04 or a permit to practice under section ~~43-02.2-05 or 43-02.2-06~~ 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~~ services performed within this state by the applicant.

SECTION 8. AMENDMENT. Section 43-02.2-09 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-09. Enforcement against holders of certificates and permits licensees.

1. The board may revoke any certificate, license, or permit issued under ~~section 43-02.2-04, 43-02.2-05, or 43-02.2-06~~ this chapter or corresponding provisions of prior law; suspend any such certificate, license, or permit or refuse to renew any such certificate, license, 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, license, or permit;

- b. Cancellation, revocation, suspension, or refusal to renew ~~authority to engage in the practice of public accountancy~~ a certificate, license, or permit in any other state or jurisdiction for any cause;
 - c. Failure, on the part of a holder of a certificate, license, or permit, to maintain compliance with the requirements for issuance or renewal of such certificate, license, or permit or to report changes to the board under section 43-02.2-04, ~~43-02.2-05~~, ~~or~~ 43-02.2-06, or 43-02.2-07;
 - d. Revocation or suspension of the right to practice before any state or federal agency;
 - e. Dishonesty, fraud, or gross negligence in the ~~practice of public accountancy~~ performance of services as a licensee or in the filing or failure to file the ~~certificate or permit~~holder's licensee's own income tax returns;
 - f. Violation of any provision of this chapter or rule adopted by the board under this chapter;
 - g. Violation of any rule of ~~professional~~ conduct adopted by the board under section 43-02.2-03;
 - h. Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state if the acts involved would have constituted a crime under the laws of this state;
 - i. Performance of any fraudulent act while holding a certificate, license, 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~~. perform services while a licensee; and
 - k. Making any false or misleading statement or verification, in support of an application for a certificate, license, or permit filed by another.
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 9. AMENDMENT. Section 43-02.2-11 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-11. Reinstatement.

1. If the board has suspended, refused to renew, or revoked a certificate, license, or a permit ~~or refused to renew a certificate or permit~~, the board may modify the suspension or reissue the certificate, license, 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, license, 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 10. AMENDMENT. Section 43-02.2-12 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-12. Unlawful acts.

1. A person or firm ~~not holding a valid permit issued under section 43-02.2-05 or 43-02.2-06~~ that is not a licensee may not practice or offer to practice public accountancy or issue a report on financial statements of any other person, firm, organization, or governmental unit. ~~This prohibition does~~ Individual licensees may not practice public accountancy unless they do so within a firm that holds a permit issued under this chapter. These prohibitions do not apply to an officer, partner, or employee of any firm or organization affixing ~~a~~ the person's name or signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the signer holds therein, does not prohibit any act of a public official or employee in the performance of duties as such, and does not prohibit the performance by any persons of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. This prohibition does not apply to transactions between manufacturing and sales organizations and their customers when accounting services accompany the sale of products provided that such accounting services are incidental and that any financial report made is clearly titled "unaudited financial report".
2. ~~The prohibition contained in subsection 4 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 4 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 issued under this chapter may not use or assume the title or designation "certified public accountant", or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant.
5. ~~3.~~ A firm may not practice public accountancy or assume or use the title or designation "certified public accountant", or the abbreviation "CPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants a certified public accountant firm, unless the firm holds a valid permit issued under section 43-02.2-06, and all partners, officers, and shareholders of the firm hold certificates this chapter.
6. ~~4.~~ 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 43-02.2-07.
7. ~~5.~~ A firm may not practice public accountancy, or assume or use the title or designation "licensed public accountant", the abbreviation "LPA", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of licensed public accountants a licensed public accountant firm, unless the firm holds a valid permit issued under section 43-02.2-06, and all partners, officers, and shareholders of the firm are licensed public accountant registrants this chapter.
8. ~~6.~~ A person or firm not holding a valid certificate, license, or permit issued under section 43-02.2-05 or 43-02.2-06 this chapter 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 43-02.2-03.
9. ~~7.~~ A person or firm not holding a valid certificate, license, or permit issued under section 43-02.2-05 or 43-02.2-06 this chapter may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a certificate, license, or permit or has special competence as an accountant or auditor. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's name or signature to any 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 43-02.2-05.~~
11. 8. ~~A person or firm holding a permit under this chapter licensee may not engage in the practice of public accountancy using use 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. 9. 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 11. AMENDMENT. Section 43-02.2-15 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-15. Single act evidence of practice. In any action brought under ~~section 43-02.2-09, 43-02.2-10, 43-02.2-12, 43-02.2-13, or 43-02.2-14~~ this chapter, evidence of the commission of a single act prohibited by this chapter 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 12. AMENDMENT. Section 43-02.2-16 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-16. 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 43-02.2-09 or 43-02.2-10, in ethical investigations conducted by private professional organizations, or in the course of practice reviews, or to other persons active in the organization performing services for that client on a need-to-know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

SECTION 13. AMENDMENT. Section 43-02.2-17 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-17. 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 while a licensee~~, 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 14. A new section to chapter 43-02.2 of the North Dakota Century Code is created and enacted as follows:

Substantial equivalency.

1. An individual whose principal place of business is not in this state, shall have all the privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under sections 43-02.2-04 or 43-02.2-05, if the individual holds a valid certificate as a CPA from any state that has attained substantial equivalency, or if the individual's CPA qualifications are deemed to meet substantial equivalency. Individuals intending to enter the state under this provision shall submit the applicable application and fees prior to entry. Any licensee of another state exercising the privilege afforded under this section hereby consents, as a condition of the grant of this privilege:

- a. To the personal and subject matter jurisdiction of the board;
 - b. To comply with this chapter and the board's rules; and
 - c. To the appointment of the state board which issued the person's certificate as the person's agent upon whom process may be served in any action or proceeding by this board against the licensee.
2. A licensee of this state offering or rendering services or using the licensee's CPA title in another state is subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy of another state.

SECTION 15. REPEAL. Section 43-02.2-05 of the North Dakota Century Code is repealed.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 373

SENATE BILL NO. 2149

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04, 43-07-09, 43-07-10, 43-07-17, 43-07-18, and 43-07-19 of the North Dakota Century Code, relating to licensing of contractors, revoking a contractor's license, appointing an agent for service of process for a nonresident contractor, and civil penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. 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. No sooner than ~~ten~~ twenty days after sending written notice to a contractor at the contractor's last known address, the registrar shall use procedures of chapter 28-32 to revoke the license of any contractor who fails to:

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

SECTION 2. AMENDMENT. Section 43-07-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles 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 March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

SECTION 3. AMENDMENT. Section 43-07-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Invalidity 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, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of ten thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each 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, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, 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 authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 4. AMENDMENT. Section 43-07-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-17. Revocation of license - Relicensing. A licensee whose license has been revoked may not be relicensed ~~during the current calendar year in which the decision to revoke the license was made~~ for a period of up to five years.

SECTION 5. AMENDMENT. Section 43-07-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-18. Penalty. Any person acting in the capacity of a contractor within the meaning of this chapter without a license as herein provided is guilty of a class B misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person makes application for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as a contractor when not licensed as a contractor was clearly erroneous.

²⁶⁷ **SECTION 6. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota shall furnish to the secretary of state of the state of North Dakota a written appointment by which ~~such~~ the applicant appoints the secretary of state of the state of North Dakota as ~~his~~ the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be evidence of ~~said~~ the contractor's consent that any such process against ~~him~~ the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon ~~him~~ the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-22 ~~and~~, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.1 and having a current registered agent and registered address on file in the ~~corporate division~~ of the secretary of state's office need not appoint the secretary of state as agent for service of process under the provisions of this section. Within ten days after service of the summons upon the secretary of state, notice of such service ~~together~~ with the summons and complaint in the action shall be sent to the defendant contractor at ~~his~~ the contractor's last known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon ~~him~~ the secretary of state under ~~the provisions~~ of this section. Such record shall show the day and hour of service. Whenever service of process shall have been made as provided in this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as

²⁶⁷ Section 43-07-19 was also amended by section 62 of House Bill No. 1045, chapter 50.

may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against ~~him~~ the defendant contractor.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 374

HOUSE BILL NO. 1088

(Industry, Business and Labor Committee)
(At the request of the State Electrical Board)

ELECTRICIAN UNDERTAKING FUND

AN ACT to amend and reenact section 43-09-14 of the North Dakota Century Code, relating to the electrician undertaking fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-14 of the North Dakota Century Code is amended and reenacted as follows:

43-09-14. Master electrician and class B electrician - Undertaking - Fund.

Before entering into a contract agreement or undertaking with another for the installation of electrical wiring or installation of electrical parts of other apparatus, a master electrician or a class B electrician shall execute and deposit with the board an undertaking in the sum of ~~three~~ five thousand dollars for a master electrician or ~~two~~ four thousand dollars for a class B electrician conditioned ~~for~~ on the faithful performance of all electrical work undertaken ~~and the~~ by the electrician, on strict compliance with ~~all~~ the provisions of this chapter, and on the requirements of the board. In addition, a deposit must be made with the board in the amount of ~~twenty five~~ fifty dollars by a master electrician and in the amount of ~~fifteen~~ forty dollars by a class B electrician, in lieu of a surety bond. The deposit so made must be accumulated by the board in a special fund to be used for the completion of installations abandoned by electricians referred to in this section, not to exceed the amount of ~~three~~ five thousand dollars for a master electrician and ~~two~~ four thousand dollars for a class B electrician. The board shall waive the deposit for a renewal of license by electricians who have made an initial deposit under this section if at the beginning of the renewal year the fund exceeds ~~thirty~~ fifty thousand dollars. Funds in excess of ~~thirty~~ fifty thousand dollars at the end of each year may be committed and used at the direction of the board to inform and educate electricians concerning the requirements of the electrical code. The board may prescribe forms for the undertaking and make rules it deems necessary to carry out the intent of this section.

Approved March 8, 1999
Filed March 9, 1999

CHAPTER 375

HOUSE BILL NO. 1444

(Representatives Koppelman, Grumbo, Klein)
(Senators Krebsbach, Lee, Tomac)

ELECTRICIAN LICENSE EXEMPTIONS

AN ACT to amend and reenact section 43-09-16 of the North Dakota Century Code, relating to persons exempt from electrician's licensure requirements; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-09-16 of the North Dakota Century Code is amended and reenacted as follows:

43-09-16. When license not required. The following persons may not be required to hold an electrician's license:

1. Employees of public utilities engaged in the manufacture and distribution of electrical energy when engaged in work directly pertaining to the manufacture and distribution of electrical energy. This exemption terminates at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service.
2. Employees of a company that operates or installs telephone, ~~telegraph,~~ and radio communication ~~service~~ systems when engaged in work pertaining directly to ~~such service~~ the installation of telephone and radio communication conductors on premises where the installations are made for use exclusively for the transmission of telephone and radio signals.
3. Employees of dealers in household appliances, such as room air conditioners, clothes dryers, dishwashers, freezers, garbage disposals, refrigerators, stoves, washing machines, water heaters, and similar appliances when such employees are installing and connecting such appliances to an existing electrical receptacle.
4. A representative of a manufacturing firm that is installing or modifying controls of wiring solely on industrial machinery that is for use by the firm itself, and performed by or under the direction of a registered professional engineer who issues a state-accepted evaluation which is to be maintained with the equipment.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 376**HOUSE BILL NO. 1403**

(Representatives Price, Metcalf)
(Senators Lee, Redlin)

**NURSE MEDICATION ADMINISTRATION AND
LICENSURE EXEMPTIONS**

AN ACT to provide a licensed nurse may delegate medication administration; to create and enact a new subsection to section 43-12.1-04 of the North Dakota Century Code, relating to persons exempt from nurse licensure; to require the department of human services and the North Dakota board of nursing to report to the legislative council and to make recommendations regarding administration of medications; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-12.1-04 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

A person who provides medication administration according to individual needs and as a part of an individual habilitation or case plan within a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11.

SECTION 2. Delegation of medication administration. A licensed nurse may delegate medication administration to a person exempt under section 1 of this Act.

SECTION 3. DEPARTMENT OF HUMAN SERVICES AND NORTH DAKOTA BOARD OF NURSING - RECOMMENDATION - REPORT TO LEGISLATIVE COUNCIL. The department of human services and the North Dakota board of nursing, after consultation with appropriate individuals and entities, shall prepare a joint recommendation for consideration by the fifty-seventh legislative assembly regarding the administration of medication according to section 1 of this Act. During the 1999-2000 interim, the department of human services and the North Dakota board of nursing shall report annually to the legislative council regarding the progress in preparing a joint recommendation under this section. By December 10, 2000, the department of human services shall certify to the governor and the legislative council regarding satisfaction of the reporting and recommendation requirements under this section.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 377

HOUSE BILL NO. 1159

(Human Services Committee)
(At the request of the State Board of Optometry)

OPTOMETRIST LICENSURE

AN ACT to amend and reenact sections 43-13-17 and 43-13-18 of the North Dakota Century Code, relating to licensure of optometrists by examination and endorsement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-17 of the North Dakota Century Code is amended and reenacted as follows:

43-13-17. Application for ~~examination~~ licensure - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for or to secure 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 in the form prescribed by the board.~~ An application for admission by examination must be filed at least fifteen days before the date of the examination. ~~The application must be accompanied by the affidavits of two 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~~ Is a person of good moral character; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education ~~of the American optometric association.~~

~~Before receiving a license, the~~ The applicant shall pay to the secretary of the board a registration fee of a reasonable sum fixed by the board.

SECTION 2. AMENDMENT. Section 43-13-18 of the North Dakota Century Code is amended and reenacted as follows:

43-13-18. ~~When examination not required~~ Licensure by endorsement. An applicant may secure a license to practice optometry in this state without taking ~~the required examination upon~~ all required examinations as follows:

1. Presentation of a certified copy or an original certificate of registration or license in good standing issued to him the applicant 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 reasonable sum fixed by the board: and

3. Unless waived by the board, all applicants for licensure by endorsement must:
- a. Apply for the highest level of therapeutic licensure in this state.
 - b. Be current in the continuing education requirements of their current state of licensure.
 - c. Pass a North Dakota state optometry law examination as required by the board to be given at such times and places as are prescribed by the board.
 - d. Have a minimum of four years of practice, federal service, or teaching experience as a licensed optometrist prior to making application.
 - e. Have not committed any act that would constitute grounds for disciplinary action under this chapter or the rules and regulations of the board.
 - f. Submit to an oral interview before such persons and at a time and place as prescribed by the board.

The board may give or require a practical examination ~~to~~ of the applicant if it is deemed necessary.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 378

HOUSE BILL NO. 1388

(Representatives Nottestad, Ekstrom, Gorder)
(Senators T. Mathern, Robinson, Sand)

PHARMACIST EDUCATION AND PRACTICE

AN ACT to create and enact two new sections to chapter 43-15 of the North Dakota Century Code, relating to pharmacist education requirements and approved laboratory tests; and to amend and reenact subsection 23 of section 43-15-01 of the North Dakota Century Code, relating to the definition of practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁸ **SECTION 1. AMENDMENT.** Subsection 23 of section 43-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23. "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 as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records ~~therefor~~ for this storage; the responsibility for advising, consulting, and educating ~~where~~ where if necessary or ~~where if~~ 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 if~~ appropriate and where if 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; emergency pharmacy practice; prescriptive practices as limited ~~herein~~ under this chapter; the performance of laboratory tests to provide pharmaceutical care services which are waived under the Federal Clinical Laboratory Improvement Act of 1988 [Pub. L. 100-578, section 2, 102 Stat. 2903; 42 U.S.C. 263a et seq.], as amended; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

²⁶⁸ Section 43-15-01 was also amended by section 4 of Senate Bill No. 2176, chapter 379.

SECTION 2. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Educational requirements - Rules. The board shall adopt rules establishing the educational requirements and quality control procedures for pharmacists who conduct laboratory tests provided in subsection 23 of section 43-15-01. These rules must include a requirement that pharmacists receive training for each specific test performed and a requirement that pharmacists demonstrate proficiency for each test performed following nationally recognized proficiency guidelines.

SECTION 3. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Approved laboratory tests. Approved laboratory tests are the following waived screening tests: glucose monitoring devices (FDA cleared/home use) 9221, cholesterol 1020, HDL cholesterol 2550, triglyceride 6118, and glycosylated hemoglobin (Hgb A1C) 2204. Additional tests may be added to this list as jointly determined by the board and the board of medical examiners.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 379

SENATE BILL NO. 2176

(Industry, Business and Labor Committee)
(At the request of the Board of Pharmacy)

PHARMACY PRACTICE

AN ACT to amend and reenact subsection 20 of section 19-02.1-01, subsection 4 of section 19-03.1-11, subsections 3 and 4 of section 19-03.1-22, subsection 24 of section 43-15-01, sections 43-15-18, 43-15-31.3, and subsection 6 of section 43-15-35 of the North Dakota Century Code, relating to controlled substance regulation and the practice of pharmacy in North Dakota; and to repeal section 43-15-33 of the North Dakota Century Code, relating to sale of emergency medicines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 20 of section 19-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

20. ~~"Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this chapter.~~ "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice which are subject to this chapter.

SECTION 2. AMENDMENT. Subsection 4 of section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Butorphanol.
 - e. Camazepam.
 - ~~e.~~ f. Chloral betaine.
 - ~~f.~~ g. Chloral hydrate.
 - ~~g.~~ h. Chlordiazepoxide.
 - ~~h.~~ i. Clobazam.

- i- j. Clonazepam.
- j- k. Clorazepate.
- k- l. Clotiazepam.
- l- m. Cloxazolam.
- m- n. Delorazepam.
- n- o. Diazepam.
- o- p. Estazolam.
- p- q. Ethchlorvynol.
- q- r. Ethinamate.
- r- s. Ethyl loflazepate.
- s- t. Fludiazepam.
- t- u. Flurazepam.
- u- v. Halazepam.
- v- w. Haloxazolam.
- w- x. Ketazolam.
- x- y. Loprazolam.
- y- z. Lorazepam.
- z- aa. Lormetazepam.
- aa- bb. Mebutamate.
- bb- cc. Medazepam.
- cc- dd. Meprobamate.
- dd- ee. Methohexital.
- ee- ff. Methylphenobarbital (also known as mephobarbital).
- ff- gg. Midazolam.
- gg- hh. Nimetazepam.
- hh- ii. Nitrazepam.
- ii- jj. Nordiazepam.
- jj- kk. Oxazepam.

- ~~kk.~~ ll. Oxazolam.
- ~~ll.~~ mm. Paraldehyde.
- ~~mm.~~ nn. Petrichloral.
- ~~nn.~~ oo. Phenobarbital.
- ~~oo.~~ pp. Pinazepam.
- ~~pp.~~ qq. Prazepam.
- ~~qq.~~ rr. Quazepam.
- ss. Sibutramine.
- ~~rr.~~ tt. Temazepam.
- ~~ss.~~ uu. Tetrazepam.
- ~~tt.~~ vv. Triazolam.
- ~~uu.~~ ww. Zolpidem.

SECTION 3. AMENDMENT. Subsections 3 and 4 of section 19-03.1-22 of the North Dakota Century Code are amended and reenacted as follows:

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this chapter or chapter 19-02.1, may not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank and must be signed within ~~seventy-two hours~~ seven days by the practitioner who issued the same. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.
4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule V must be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner. Any oral prescription for such compound, mixture, or preparation must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank and must be signed within ~~seventy-two hours~~ seven days by the practitioner who issued ~~same~~ the prescription. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

²⁶⁹ **SECTION 4. AMENDMENT.** Subsection 24 of section 43-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24. "Practitioner" means a ~~physician, dentist, veterinarian, scientific investigator, or other person (other than pharmacists) licensed by North Dakota and permitted by such license to dispense, conduct research with respect to or administer~~ an individual licensed, registered or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice or research in North Dakota.

SECTION 5. AMENDMENT. Section 43-15-18 of the North Dakota Century Code is amended and reenacted as follows:

43-15-18. License of pharmacy intern. To register in this state a pharmacy intern must have completed one year ~~in an approved~~ of college of pharmacy, be registered in a prepharmacy program, and must be employed by a licensed pharmacist. At the date of entering into ~~his~~ an intern internship, ~~he~~ an intern shall file with the ~~secretary~~ executive director of the board the following certificates accompanied by a fee ~~of five dollars~~ set by the board:

1. ~~A certificate~~ An application stating ~~he~~ the applicant has entered into an internship ~~and giving his age,~~ the intern's name, residence, and educational qualifications.
2. ~~A certificate~~ statement from ~~his~~ the intern's employer stating that the applicant ~~has been~~ will be employed by ~~him~~ the pharmacist, as a pharmacy intern, that to ~~his~~ the employer's knowledge the applicant possesses the required education and qualifications.

The ~~secretary~~ executive director of the board shall file the ~~certificates~~ application and license the applicant as a pharmacy intern.

SECTION 6. AMENDMENT. Section 43-15-31.3 of the North Dakota Century Code is amended and reenacted as follows:

43-15-31.3. Oral transmission of prescriptions. An oral transmission of a prescription drug may be accepted and dispensed by a pharmacist or licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the prescription. The practitioner shall document the order for oral transmission in the patient's records. Only a licensed pharmacist or a licensed pharmacist intern or a registered pharmacy technician may receive an orally transmitted new or refill prescription.

SECTION 7. AMENDMENT. Subsection 6 of section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~The pharmacy has within the pharmacy at all times the latest revision of the United States Pharmacopeia/National Formulary and supplements~~

²⁶⁹ Section 43-15-01 was also amended by section 1 of House Bill No. 1388, chapter 378.

thereto, or the United States Pharmacopeia Dispensing Information, volumes I and II (USPDI). Suitable reference sources either in book or electronic data form, available in the pharmacy or on-line, which might include the United States pharmacopeia and national formulary, the United States pharmacopeia dispensing information, facts and comparisons, micro medex, the ASHP formulary or other suitable references pertinent to the practice carried on in the licensed pharmacy.

SECTION 8. REPEAL. Section 43-15-33 of the North Dakota Century Code is repealed.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 380

HOUSE BILL NO. 1158

(Human Services Committee)

(At the request of the State Board of Medical Examiners)

MEDICAL PRACTICE AND LICENSURE EXEMPTIONS

AN ACT to create and enact a new section to chapter 43-17 of the North Dakota Century Code, relating to exceptions to the licensure requirements to practice medicine; and to amend and reenact sections 43-17-01, 43-17-02, 43-17-06, 43-17-30.1, and 43-17-31 of the North Dakota Century Code, relating to the definitions of practice of medicine, persons exempt from medical practice licensure requirements, officers of the board of medical examiners, and disciplinary action of the board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17-01. Definitions.

1. "Board" means the state board of medical examiners.
2. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
2. 3. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:
 - a. One who holds ~~himself~~ out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
 - b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
 - c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
 - d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to ~~his~~ the person's name, indicating that ~~he~~ the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings must be held to be engaged in the practice of medicine.
3. "~~Board~~" means the state board of medical examiners.

²⁷⁰ **SECTION 2. AMENDMENT.** Section 43-17-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-02. Persons exempt from the provisions of chapter. The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the state board of medical examiners may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.
2. ~~Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.~~
3. ~~The domestic administration of family remedies.~~
4. ~~3.~~ Dentists practicing their profession when properly licensed.
5. ~~4.~~ Optometrists practicing their profession when properly licensed.
6. ~~5.~~ The practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if ~~he~~ the person does not hold ~~himself~~ out to be a physician or surgeon.
7. ~~6.~~ Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
8. ~~7.~~ Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
9. ~~8.~~ Podiatrists practicing their profession when properly licensed.
10. ~~9.~~ Any person rendering services as a ~~physician's trained~~ physician assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners shall prescribe rules and regulations governing the conduct, licensure, fees, qualifications, discipline, activities, and supervision of ~~physicians' trained~~ physician assistants. ~~Physicians'~~

²⁷⁰ Section 43-17-02 was also amended by section 63 of House Bill No. 1045, chapter 50.

~~trained~~ Physician assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

44. 10. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
42. 11. A person rendering fluoroscopy services as a radiologic technologist if the service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners prescribes rules governing the conduct, permits, fees, qualifications, activities, discipline, and supervision of radiologic technologists who provide those services.

SECTION 3. AMENDMENT. Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17-06. Officers of the board. The board shall elect a president and vice president from its own number and a secretary-treasurer. The secretary-treasurer need not be a member of the board. ~~He~~ The secretary-treasurer must be the general administrative and prosecuting officer of such board.

SECTION 4. AMENDMENT. Section 43-17-30.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-30.1. Disciplinary action. The board is authorized to take disciplinary action against a licensed physician by any one or more of the following means, as it may find appropriate:

1. Revocation of license.
2. Suspension of license.
3. Probation.
4. Imposition of stipulations, limitations, or conditions relating to the practice of medicine.
5. ~~Reprimand.~~
6. Letter of censure.
7. ~~Letter of concern.~~
8. 6. Require the licensee to provide free public or charitable service for a defined period.
9. 7. 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.~~ Any fines collected by the state board of medical examiners must be deposited in the state general fund.

SECTION 5. AMENDMENT. Section 43-17-31 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action. Disciplinary action may be imposed against a physician upon any of the following grounds:

1. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
2. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
3. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
4. Habitual use of alcohol or drugs.
5. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
6. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
7. Obtaining any fee by fraud, deceit, or misrepresentation.
8. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or the commission on medical competency.
10. The practice of medicine under a false or assumed name.
11. The advertising for the practice of medicine in an untrue or deceptive manner.
12. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
13. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
14. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.
15. Gross negligence in the practice of medicine.
16. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.

17. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
18. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
19. The failure to comply with the reporting requirements of section 43-17.1-05.1.
20. The failure to transfer medical records, except those relating to psychiatric treatment which must be governed by board rule, to another physician or to supply copies thereof to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative. A reasonable charge for record copies may be assessed.
21. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
22. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
23. 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.
24. The violation of any state or federal statute or regulation relating to controlled substances.
25. 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.
26. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
27. The failure to properly monitor a physician assistant, a fluoroscopy technologist, or an emergency medical technician.
28. The failure to furnish the board or the ~~commission on medical competency~~ investigative panel, their investigators, or representatives, information legally requested by the board or the ~~commission~~ investigative panel.

The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 6. A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Practice of medicine or osteopathy by holder of permanent, unrestricted license. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the state board of medical examiners under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation or teaching assistance for a period of not more than twenty-four hours; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 381

HOUSE BILL NO. 1157

(Human Services Committee)

(At the request of the State Board of Medical Examiners)

COMMISSION ON MEDICAL COMPETENCY

AN ACT to amend and reenact sections 23-34-03, 43-17-03, 43-17.1-01, 43-17.1-02, 43-17.1-04, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, 43-17.1-08, and 43-17.1-09 of the North Dakota Century Code, relating to the commission on medical competency; and to repeal section 43-17.1-03 of the North Dakota Century Code, relating to compensation of members of the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-03. Peer review records - Privileged - Exceptions. Peer review records are privileged and are not subject to subpoena or discovery or introduction into evidence in any civil or administrative action, except:

1. Records gathered from an original source that is not a peer review committee;
2. Testimony from any person as to matters within that person's knowledge, provided the information was not obtained by the person as a result of the person's participation in a professional peer review; or
3. Peer review records subpoenaed in an investigation conducted by ~~the commission on medical competency~~ an investigative panel of the board of medical examiners pursuant to chapter 43-17.1 or subpoenaed in a disciplinary action before the board of medical examiners pursuant to section 43-17-30.1. Any peer review records provided to ~~the commission~~ an investigative panel of the board of medical examiners or introduced as evidence in any disciplinary action before the board are confidential and are not subject to subpoena, discovery, or admissibility into evidence in any civil or administrative action, and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 2. AMENDMENT. Section 43-17-03 of 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~~ eleven members, eight of whom are ~~M.D.'s~~ doctors of medicine, one of whom is a ~~D.O.~~ doctor of osteopathy, and ~~one~~ two of whom ~~is~~ are designated as a public ~~member~~ members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. ~~The~~ Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. A person appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 3. AMENDMENT. Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "~~Commission~~" "Board" means the ~~commission on medical competency state board of medical examiners.~~
2. "~~Commissioner~~" means the ~~commissioner of insurance.~~
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

SECTION 4. AMENDMENT. Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-02. ~~Commission on medical competency~~ Investigative panels of the board.

1. There is hereby created a ~~commission on medical competency~~ which must consist of:
 - a. ~~Two members of the state board of medical examiners appointed by the chairman of the board to two-year terms, except one of the initial appointees must be appointed for a term of three years.~~
 - b. ~~Two physicians in active practice who have been actively engaged in the practice of medicine in this state for at least eight years, selected by the state medical association. Members so selected shall serve three-year terms, except one of the initial members so selected shall serve for only two years.~~

- e. ~~The commissioner and the attorney general, or their designated representatives.~~

~~No appointed member of the commission may serve more than two terms consecutively. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, excluding the president. Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. In addition, the president of the board shall serve on both investigative panels.~~

2. ~~The commission~~ Each investigative panel shall select a chairman and a vice chairman from its own members, and a secretary who may or may not be a member of the ~~commission~~ panel and who shall keep minutes of all meetings thereof.
3. ~~The commission may employ an executive secretary,~~ Each investigative panel may engage investigators, medical experts, and such other experts as the ~~commission~~ panel in its discretion determines to be necessary to accomplish its purposes. The attorney general shall provide counsel to the ~~commission~~ investigative panels, but ~~the commission~~ an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable.
4. Cases for investigation must be assigned to each investigative panel by the president of the board.

SECTION 5. AMENDMENT. Section 43-17.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-04. ~~Commission meetings~~ Meetings of investigative panels. Meetings of the ~~commission~~ investigative panels must be held at least once annually in Bismarck, North Dakota, and at such other place or places within the state and at such times as ~~the commission~~ each investigative panel may determine. A majority of the members of ~~the commission~~ an investigative panel constitutes a quorum, and no action of ~~the commission~~ an investigative panel is effective without the concurrence therein of a majority of ~~its~~ the members present at the time of the decision. Special meetings of ~~the commission~~ an investigative panel may be called at any time by the chairman or vice chairman of ~~the commission~~ an investigative panel or upon the written request of any three members of ~~the commission~~ an investigative panel.

SECTION 6. AMENDMENT. Section 43-17.1-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. ~~All residents have the right to~~ Any person may make or refer written complaints to the ~~commission~~ investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that ~~the commission~~ an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes

a report to the ~~commission on medical competency~~ investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the ~~commission~~ investigative panel shall conduct the investigation as it deems necessary to resolve the matter as it deems appropriate. The ~~commission~~ investigative panel shall determine whether ~~the~~ a formal hearing should be held to determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by section 43-17-31 law.

2. If the ~~commission~~ investigative panel determines that a formal hearing should be held to determine whether any licensed physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by ~~section 43-17-31 law~~, it shall inform the respondent physician, physician assistant, or fluoroscopy technologist involved of the specific charges to be considered by serving upon ~~him~~ that person a copy of a formal complaint filed with the board of medical examiners for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the ~~commission~~ investigative panel may not participate in any proceeding before the board relating to said complaint. The complaint must be prosecuted before the board by the attorney general or one of ~~his~~ the attorney general's assistants.
3. If ~~the commission~~ an investigative panel finds that there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The ~~commission~~ investigative panel shall provide written notice to the individual or entity filing the original complaint and the person who is the subject of the complaint of the ~~commission's~~ investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 7. AMENDMENT. Section 43-17.1-05.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reports to ~~commission on medical competency~~ - When required Reporting requirements. A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the ~~commission~~ investigative panel of the board. 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~~ investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee ~~the commission~~ an investigative panel shall, or on its own motion ~~the commission~~ an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes

of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or ~~radiology~~ fluoroscopy technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.

²⁷¹ **SECTION 8. AMENDMENT.** Section 43-17.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. ~~Commission powers~~ Powers of the board's investigative panels.

The ~~commission~~ board's investigative panels may:

1. Subpoena witnesses and physician and hospital records relating to the practice of any physician, physician assistant, or fluoroscopy technologist under investigation. The confidentiality of the records by any other statute or law does not affect the validity of ~~the commission's~~ an investigative panel'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 chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, 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, physician assistant, or fluoroscopy technologist with respect to any complaint.
7. File a formal complaint against any licensed physician, physician assistant, or fluoroscopy technologist with the state board of medical examiners.

²⁷¹ Section 43-17.1-06 was also amended by section 64 of House Bill No. 1045, chapter 50.

SECTION 9. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-08. Communication to ~~commission~~ investigative panel privileged. Communications to the ~~commission~~ investigative panels and ~~its~~ their agents are privileged, and no member of the ~~commission~~ investigative panels nor any of ~~its~~ their agents may be compelled to testify with respect thereto in any proceedings except in ~~these~~ formal proceedings conducted before the board of medical examiners ~~wherein the competency of a physician is at issue~~. All records of the ~~commission~~ investigative panels, except ~~its~~ their financial records, are confidential. Notwithstanding the provisions of this section, if ~~the commission~~ an investigative panel determines that the records of the ~~commission~~ investigative panel disclose a possible violation of state or federal criminal law, the ~~commission~~ investigative panel may provide the records to the appropriate law enforcement agency.

SECTION 10. AMENDMENT. Section 43-17.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-09. ~~Commission immunity~~ Immunity. Members of the ~~commission~~ investigative panels, special masters appointed by ~~it~~ an investigative panel, and agents of ~~the commission~~ an investigative panel, are immune from any liability of any kind based upon any acts or omissions in the course of the performance of responsibilities in an official capacity except liability for bodily injury arising out of accidents caused, or contributed to, by the negligence of the member or agent.

SECTION 11. REPEAL. Section 43-17.1-03 of the North Dakota Century Code is repealed.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 382

SENATE BILL NO. 2098

(Industry, Business and Labor Committee)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER CONTINUING EDUCATION

AN ACT to amend and reenact section 43-23-08.2 of the North Dakota Century Code, relating to continuing education requirements for real estate brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-08.2 of the North Dakota Century Code is amended and reenacted as follows:

43-23-08.2. License renewal - Continuing education required. Commencing January 1, ~~1984~~ 2000, and every ~~three~~ two years thereafter, each applicant for renewal of a broker's or salesperson's license shall, in addition to the requirements of section 43-23-08, submit proof of participation in not less than ~~twenty-four~~ sixteen hours of approved continuing education, six of which must be completed in the first year. If a broker or salesperson will not have been licensed ~~three~~ two years on the date the individual is required to certify continuing education hours, the number of required hours may be reduced in accordance with rules ~~promulgated~~ adopted by the commission. The commission shall set standards for the approval of lectures, seminars, courses of instruction, and correspondence courses that qualify for satisfaction of this requirement, and shall maintain a current list of lectures, seminars, courses of instruction, and correspondence courses so approved. Lectures, seminars, courses of instruction, and correspondence courses may not require passing of a test to qualify for satisfaction of this requirement. Licensees shall have the option of attending an approved course of instruction in person or taking an approved correspondence course. Attendance at a course or the completion of a correspondence course must be documented in accordance with procedures established by the commission. The commission may adopt rules concerning implementation of this section pursuant to chapter 28-32.

~~No~~ A license may not be renewed by the commission unless the proper certification showing fulfillment of the continuing education requirements of this section and the appropriate licensing fees are submitted to the commission in accordance with section 43-23-13.1.

The commission may exempt licensees from the continuing education requirements of this section for reasons relating to the licensee's health, military service, or for other good cause. Licensees who have held a real estate license for fifteen continuous years on January 1, 1984, are exempt from the requirements of this section.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 383**SENATE BILL NO. 2064**

(Senators Watne, Traynor)

**REAL ESTATE TRANSACTION SEXUAL OFFENDER
DISCLOSURE**

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to the duty to disclose information on sexual offenders in a real estate transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Disclosure of sexual offenders. A licensee is not liable for any action resulting from any disclosure or nondisclosure relating to the registration of sexual offenders under section 12.1-32-15.

Approved March 29, 1999

Filed March 29, 1999

CHAPTER 384

HOUSE BILL NO. 1164

(Industry, Business and Labor Committee)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER FUNDS

AN ACT to amend and reenact section 43-23-14.1 of the North Dakota Century Code, relating to handling of funds by real estate brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-14.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-14.1. Handling of funds by brokers. ~~Every~~ Except as otherwise provided in this section, every broker shall, at all times, maintain in ~~his~~ the broker's name or firm name, a separate trust account designated as such in a federally insured financial institution in this state in which ~~he~~ the broker shall immediately place as a demand deposit all funds not ~~his~~ the broker's own coming into ~~his~~ the broker's possession, in accordance with rules ~~and regulations promulgated~~ adopted by the commission. This requirement extends to funds in which ~~he~~ the broker may have some future interest or claim and includes; ~~but is not limited to,~~ earnest money deposits. Provided, the deposit of funds may be made in an interest-bearing account in a federally insured bank, trust company, savings and loan association, or credit union if all parties having an interest in the funds have ~~so~~ agreed in writing and if a copy of the agreement is maintained on file by the broker. ~~No~~ A broker may ~~not~~ commingle ~~his~~ the broker's personal funds or other funds in a trust account, except that a broker may deposit and keep a sum not to exceed ~~one~~ five hundred dollars in ~~such~~ the account from ~~his~~ the broker's personal funds, which sum must be specifically identified and deposited to cover service charges related to the trust account. In conjunction with ~~such~~ the account, ~~he~~ the broker shall maintain at ~~his~~ the broker's usual place of business, books, records, contracts, and other necessary documents so that the adequacy of ~~such~~ the account may be determined at any time. Trust accounts and other records must be open to inspection by the commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

A broker who does not accept trust funds in real estate brokerage transactions and who has applied for and received a waiver from the real estate commission is not required to maintain a designated trust account. However, if a broker does not maintain a trust account and later receives trust funds in a real estate brokerage transaction, the broker shall open a designated trust account as required by this section and deposit any trust funds in accordance with rules adopted by the commission.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 385**SENATE BILL NO. 2286**
(Senator Tomac)**REAL ESTATE APPRAISER RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 43-23.3 and a new subsection to section 43-23.3-03 of the North Dakota Century Code, relating to confidentiality of real estate appraiser records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23.3 of the North Dakota Century Code is created and enacted as follows:

Public records exception. Documents obtained by the board as part of the licensing, investigation, or disciplinary process which are deemed confidential under the uniform standards of professional appraisal practices are exempt records as defined in subsection 5 of section 44-04-17.1.

SECTION 2. A new subsection to section 43-23.3-03 of the North Dakota Century Code is created and enacted as follows:

The board or its authorized representative may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-23.3 or the rules of the board. Board investigative files are exempt records as defined in subsection 5 of section 44-04-17.1, but a copy of the investigative file must be provided to a licensee if a complaint is filed against the licensee by the board.

Approved March 4, 1999
Filed March 5, 1999

CHAPTER 386**SENATE BILL NO. 2275**

(Senator Grindberg)

MASSAGE PRACTICE

AN ACT to create and enact a new subsection to section 43-25-04 of the North Dakota Century Code, relating to the practice of massage; to amend and reenact subsection 3 of section 43-25-04 of the North Dakota Century Code, relating to physical therapist assistants; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-25-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Registered physical therapists and physical therapist assistants under the laws of this state.

SECTION 2. A new subsection to section 43-25-04 of the North Dakota Century Code is created and enacted as follows:

Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.

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

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 387**SENATE BILL NO. 2309**

(Senator Tomac)

MASSAGE SCHOOL ACCREDITATION

AN ACT to amend and reenact subdivision a of subsection 1 of section 43-25-07 of the North Dakota Century Code, relating to school of massage therapy accreditation standards; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 43-25-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board; which may not be less than the standards of the American massage therapy association commission on massage therapy accreditation; or if the board has not adopted standards, the school of massage meets the curriculum guidelines of the American massage therapy association commission on massage therapy accreditation and the school requires at least seven hundred fifty hours of supervised instruction. Any student enrolled in a massage school on or before the effective date of this Act satisfies the requirements in this subdivision if the student presents a diploma or credentials issued by a school of massage that requires at least five hundred hours of instruction.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

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

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 388

HOUSE BILL NO. 1074

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

VETERINARIAN EXAMINATION AND LICENSURE

AN ACT to amend and reenact subsection 5 of section 43-29-01.1, subsection 1 of section 43-29-07, subsections 2 and 3 of section 43-29-07.1, and subsection 2 of section 43-29-07.2 of the North Dakota Century Code, relating to examination and licensure of veterinarians and veterinary technicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-29-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Certificate" means a certificate issued by the ~~American veterinary medical association~~ educational commission for foreign veterinary graduates, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

SECTION 2. AMENDMENT. Subsection 1 of section 43-29-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Any~~ A person desiring a license to practice veterinary medicine in this state shall make written application to the board. The application must show the applicant is a graduate of an accredited or approved college of veterinary medicine or the holder of a certificate. The application must also show the applicant is a person of good moral character and any other information and proof the board may require. The application must be accompanied by a fee in the amount established by the board. If the board determines an applicant possesses the proper qualifications, the board shall admit the applicant to the next examination. If the applicant is eligible for license without examination under section 43-29-07.2, the board may grant the applicant a license. If an applicant is found not qualified to take the examination or for a ~~license~~ license without examination, the board shall immediately notify the applicant in writing of this finding and the grounds of this finding. An applicant found unqualified may request a hearing on the question of the applicant's qualifications.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 43-29-07.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. An applicant for licensure as a veterinary technician must pass the veterinary technician national examination with a score ~~of at least~~ seventy percent approved by the board.

3. An applicant for licensure as a veterinary technician who has successfully passed the veterinary technician national examination shall request that the applicant's examination scores be forwarded to the board ~~by the professional examination service~~. An applicant is eligible for licensure upon meeting the licensure requirements set by the board.

SECTION 4. AMENDMENT. Subsection 2 of section 43-29-07.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The board may issue a license without a written examination to a qualified applicant who furnishes satisfactory proof of graduation from an accredited or approved college of veterinary medicine, or holds a certificate, and who:
 - a. Has for the five years immediately before filing of the application been a practicing veterinarian licensed in a state having license requirements at the time the applicant was first licensed which were substantially equivalent to the requirements of this chapter;
 - b. Has within the three years immediately before filing the application successfully completed the examinations provided by the national board ~~of veterinary medical examiners~~ examination committee; or
 - c. Currently holds a license to practice in at least one state, has active diplomat status in a specialty organization recognized by the American veterinary medical association, and whose practice is limited to the certified specialty in the state in which the specialist is licensed without examination.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 389

HOUSE BILL NO. 1294

(Representatives Boehm, Kempenich, Renner)
(Senator Solberg)

VETERINARY MEDICINE PRACTICE

AN ACT to amend and reenact section 43-29-13 of the North Dakota Century Code, relating to the practice of veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-29-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-29-13. Practices excepted from chapter. The following persons may not be considered to be engaging in the practice of veterinary medicine in this state:

1. Those who administer to livestock, the title to which rests in themselves, or in their regular employer, except where the ownership of the animal was transferred to avoid the requirements of this chapter, or those who perform gratuitous services.
2. Anyone who conducts experiments in scientific research in the development of methods, techniques, or treatment, directly or indirectly applicable to the problems of medicine, and who in connection with these activities uses animals.
3. Anyone who is a regular student in an accredited or approved college of veterinary medicine performing duties or actions assigned by an instructor or working under the direct supervision of a licensed veterinarian during a school vacation period.
4. Anyone licensed in another state or nation when engaged in this state in consultation with veterinarians legally practicing herein.
5. A senior student who is in an approved school of veterinary medicine and who obtains from the board a student permit to practice in the office and under the direct supervision of any veterinarian practicing within this state.
6. Any employee of the United States or this state while in the performance of duties as employees.
7. Any merchant or manufacturer selling medicine, feed, an appliance, or any other product used in the prevention or treatment of animal diseases.
8. Any veterinary technician or other employee of a licensed veterinarian performing duties under the direction and supervision of the veterinarian responsible for the technician's or other employee's performance.

9. Any member of the faculty of an accredited college of veterinary medicine performing regular functions or a person lecturing or giving instructions or demonstrations at an accredited college of veterinary medicine or in connection with a continuing education course or seminar.
10. Any person selling or applying any pesticide, insecticide, or herbicide.
11. Any graduate of a foreign college of veterinary medicine who is in the process of obtaining a certificate and is performing duties or actions assigned by the graduate's instructors in an accredited or approved college of veterinary medicine.
12. Any person performing a direct embryo transfer procedure on a recipient cow. Except as provided in this subsection, a person performing a direct embryo transfer procedure on a recipient cow may not administer prescription drugs to the cow during, or as part of, the procedure. The owner of the recipient cow, however, may administer or cause the administration of prescription drugs to the recipient cow during, or as part of, the procedure if a veterinarian-client-patient relationship exists.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 390

HOUSE BILL NO. 1081

(Industry, Business and Labor Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE AND SECURITY SERVICE LICENSURE

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to temporary private investigative and security service licenses or registrations; and to amend and reenact sections 43-30-04, 43-30-06, and 43-30-16 of the North Dakota Century Code, relating to fees and criminal history record checks for applicants for a license or registration to provide private investigative and security services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-04 of the North Dakota Century Code is amended and reenacted as follows:

43-30-04. Powers of the board. The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services: ~~The board shall establish the qualifications required for licensing, including~~ armed security personnel. All rules adopted by the board and appeals therefrom, must be in accordance with chapter 28-32.

SECTION 2. AMENDMENT. Section 43-30-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-30-06. License and registration applications. Every person who desires to obtain a license or registration shall apply to the board on applications prepared and furnished by the board. Each application must include the information required by the board and must be accompanied by the required fee. As a requirement of receiving a license or registration, the board ~~may~~ shall require each applicant ~~for certification~~ to file with the board a complete set of the applicant's fingerprints; ~~taken by a law enforcement officer~~, and all other information necessary to complete a state and nationwide criminal history record check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may be used by the board for the sole purpose of determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. A criminal history record check is not required under this section if an applicant for registration has previously been the subject of a state and nationwide criminal history check, has held a registration issued by the board within the sixty days immediately preceding the application, and is applying for a new registration due solely to a change in employment. A nationwide criminal history check is not required under this section if an applicant for licensure or registration provides to the board the results of a nationwide criminal history check performed by the federal bureau of investigation at the

request of another state and if the nationwide criminal history check was performed within the sixty days immediately preceding the date of the application. A state criminal history check is not required under this section if an applicant for registration provides to the board the results of a state background check performed by the state in which the applicant currently resides and if the state background check was performed within the sixty days immediately preceding the date of the application.

SECTION 3. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Temporary license or registration. The board may issue a temporary license or registration upon payment of the required application fee and satisfaction of all other requirements set by the board for licensure or registration under this chapter except for completion of a nationwide criminal history record check on the applicant under section 43-30-06. A temporary license or registration issued under this section expires without further action by the board on the date the board receives the results of the nationwide criminal history record check on the applicant. An additional fee may not be charged for the temporary license or registration, but an application fee is not refundable if the board denies the application.

SECTION 4. AMENDMENT. Section 43-30-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-30-16. Examination and, license, and registration fees. The board may establish by rule and charge the following fees:

1. The fee to be paid by an applicant for an examination to determine the applicant's fitness to receive a license as a private investigator or a license to provide private security services ~~is~~ may not exceed one hundred dollars.
2. The fee to be paid by an applicant for the initial issuance or the renewal of a license as a private investigator or a license to provide private security services ~~is~~ may not exceed one hundred fifty dollars. A late fee not to exceed fifty dollars may be charged for each month the renewal fee is due and unpaid.
3. The fee to be paid by an applicant to apply for a license to conduct a private security or detective agency ~~is~~ may not exceed one hundred dollars.
4. The fee for the issuance or the renewal of a license to conduct a private security or detective agency ~~is~~ may not exceed three hundred dollars. A late fee not to exceed one hundred dollars may be charged for each month the renewal fee is due and unpaid.
5. The one-time fee to be paid by an applicant for the issuance of a private security training certificate ~~is~~ may not exceed twenty-five dollars.
6. The annual fee to be paid by an applicant for the issuance of an armed private security certificate ~~is~~ may not exceed twenty-five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

7. The fee to be paid for the issuance of a duplicate license ~~is~~ may not exceed twenty dollars.
8. The initial registration fee to provide private investigative service or private security service ~~is~~ may not exceed twenty dollars. The fee for the renewal of a registration to provide private investigative service or private security service ~~is~~ may not exceed five dollars. A late fee not to exceed ten dollars may be charged for each month the renewal fee is due and unpaid.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 391

HOUSE BILL NO. 1152

(Human Services Committee)

(At the request of the Board of Psychologist Examiners)

PSYCHOLOGY PRACTICE AND LICENSURE

AN ACT to amend and reenact sections 43-32-13 and 43-32-30 of the North Dakota Century Code, relating to the practice of psychology and the authority of the board of psychologist examiners to deny renewal of a license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-13. Annual license and fee. Before January first of each year, every licensed psychologist in the state shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred dollars. The secretary of the board, upon payment of the annual license fee by a person licensed under this chapter, shall issue a certificate of annual license. A person may not hold oneself out as a licensed psychologist until the annual license fee is paid. The board ~~shall revoke~~ may deny renewal of the license of a person who violates this section. Annually, the board shall mail a renewal notice to all licensed psychologists at the address on file with the board.

SECTION 2. AMENDMENT. Section 43-32-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-30. Persons exempt from this chapter. This chapter does not apply to:

1. Any 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 the person are a part of the duties of the person's office or position with such agency, nonprofit corporation, or institution. This exemption is not available or effective after July 1, ~~1999~~ 2001. However, the exemption period 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, or where the person affected has received from a school or college a master's degree in psychology and the person's activities and services with such agency, nonprofit corporation, or institution are performed under the supervision of a licensed psychologist. After reviewing the exemption under this subsection, the board and the department of human services shall review their definitions and rules for a master's degree in psychology as used in their own credential requirements.
2. A student or intern pursuing a course of study in psychology at a school or college, if the activities and services are a part of the person's supervised course of study, provided the student or intern does not use the title "psychologist" and the student or intern status is clearly stated.

3. A nonresident licensed or certified in the state of 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. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology unless the lecturer is licensed to practice psychology in this state.
5. A person 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 applies only when the person has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
6. A person 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.
7. An applicant licensed to practice psychology in another jurisdiction, pending disposition of the applicant's application, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
8. A person employed by an agency, nonprofit corporation, or institution who is currently exempt from licensure continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
9. A psychologist resident performing services supervised as provided under section 43-32-20.1.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 392

HOUSE BILL NO. 1227 (Representatives Wald, Haas) (Senator Wardner)

WATER WELL CONTRACTOR CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-35 of the North Dakota Century Code, relating to water well contractor continuing education requirements; to amend and reenact section 43-35-17 of the North Dakota Century Code, relating to water well contractor continuing education requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

43-35-17. Renewal of certificate - Continuing education. A certificate issued under ~~the provisions of~~ this chapter is valid for up to one year and expires on the thirty-first day of December in the year it ~~was issued of~~ issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed twelve hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made prior to before April first in the year following its the certificate's expiration, must be accompanied by a fee in an amount to be set by the board not to exceed fifty dollars, and the furnishing of must be accompanied by a bond as provided in section 43-35-14.

SECTION 2. A new section to chapter 43-35 of the North Dakota Century Code is created and enacted as follows:

Continuing education - Preapproval requirements. Each certificate holder shall earn at least twelve hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

SECTION 3. EFFECTIVE DATE. This Act becomes effective January 1, 2000, and applies to all applications for certificate renewal beginning with the 2001 certificate year.

Approved April 7, 1999

Filed April 8, 1999

CHAPTER 393**SENATE BILL NO. 2190**

(Senators Wardner, Urlacher)

**PROFESSIONAL SOIL CLASSIFIER BOARD AND
REGISTRATION**

AN ACT to amend and reenact sections 43-36-04, 43-36-07, 43-36-11, and 43-36-15 of the North Dakota Century Code, relating to the state board of registration for professional soil classifiers, reciprocal registration, and registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-36-04 of the North Dakota Century Code is amended and reenacted as follows:

43-36-04. Board - Compensation and expenses. Each member of the board ~~may receive twenty five dollars for each day actually engaged in the services of the board and shall be reimbursed for all actual traveling, incidental and clerical~~ is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses necessarily incurred in carrying out the provisions of this chapter as provided by law for state officers, if attending board meetings or performing duties directed by the board.

SECTION 2. AMENDMENT. Section 43-36-07 of the North Dakota Century Code is amended and reenacted as follows:

43-36-07. Board - Powers. The board has the power to administer this chapter under chapter 28-32 and:

1. To adopt and amend all bylaws, rules of procedure and regulations to administer and carry out the provisions of this chapter and for the conduct of its affairs and functions consistent with the constitution and laws of this state or this chapter which may be reasonably necessary for the proper performance of its duties and the regulation of its proceedings, meetings, records, examinations and the conduct thereof, and to adopt and promulgate a code of ethics which is binding upon all persons registered under or subject to this chapter.
2. To employ such clerks, technical experts and attorneys as it may deem necessary or desirable to carry out the provisions of this chapter.
3. To apply in the name of the state for relief by injunction without bond, to enforce the provisions of this chapter or to restrain any violation thereof. In such proceedings it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof. The members of the board are not personally liable under this proceeding.
4. To negotiate and enter reciprocal agreements with similar agencies in other states; provided that a reciprocal agreement may not limit the

board's powers and duties regarding any application for registration as a professional soil classifier or for certification as a soil classifier-in-training or regarding the enforcement of this chapter or any rules adopted to implement this chapter.

SECTION 3. AMENDMENT. Section 43-36-11 of the North Dakota Century Code is amended and reenacted as follows:

43-36-11. Registration without examination - Professional soil classifier Reciprocity. An applicant otherwise qualified must be admitted to registration as a professional soil classifier without examination ~~within one year after July 4, 1973,~~ upon payment of the required fees if he is:

1. ~~A person~~ The applicant is of good character ~~who~~, has been a resident of the state of ~~North Dakota~~ for at least one year immediately preceding the date of ~~his~~ application ~~and~~, was a practicing soil classifier on July 1, 1973, ~~and~~ meets the requirements of this chapter, and has performed work of a character satisfactory to the board; or
2. ~~A person holding~~ The applicant holds a certificate of registration in the practice of soil classifying ~~on the basis of comparable qualifications issued to him by a proper authority of another state, possession of territory of the United States and who in the opinion of the board meets the requirements of this chapter issued by another state, the District of Columbia, a Canadian province, or a foreign country, in which the requirements are substantially similar to those of this state.~~

SECTION 4. AMENDMENT. Section 43-36-15 of the North Dakota Century Code is amended and reenacted as follows:

43-36-15. Registration fees.

1. ~~Registration~~ The board shall establish registration fees must be established by the board subject to the following limitations provided:
 - ~~1.~~ a. The registration fee for in-state professional soil classifiers must be ~~in an amount not less than at least twenty nor~~ at least twenty nor dollars but not more than one hundred dollars.
 - ~~2.~~ b. The registration fee for in-state soil classifier-in-training certification or enrollment must be ~~established by the board in an amount not less than at least ten nor~~ at least ten nor dollars but not more than fifty dollars.
 - ~~3.~~ c. The registration fee for out-of-state professional soil classifiers must be at least fifty dollars but not more than one hundred dollars.
- ~~2.~~ 2. ~~Should~~ If the board ~~deny~~ denies the issuance of a certificate to an applicant, the fee ~~paid must be retained as an~~ board shall retain the application fee.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 394

HOUSE BILL NO. 1467

(Representatives Svedjan, Nelson, Keiser, Carlisle)
(Senators Kilzer, Kinnoin)

OCCUPATIONAL THERAPIST LICENSING AND PRACTICE

AN ACT to create and enact three new sections to chapter 43-40 of the North Dakota Century Code, relating to complaints and investigations against occupational therapists and occupational therapy assistants and the board of occupational therapy practice recovering costs of prosecution; to amend and reenact sections 43-40-01, 43-40-02, 43-40-03, 43-40-04, 43-40-08, 43-40-10, 43-40-11, 43-40-12, 43-40-13, 43-40-15, 43-40-16, and 43-40-18 of the North Dakota Century Code, relating to licensing and practice of occupational therapists; to repeal section 43-40-09 of the North Dakota Century Code, relating to licensing occupational therapy assistants; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-40-01 of the North Dakota Century Code is amended and reenacted as follows:

43-40-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Association" means the North Dakota occupational therapy association.
2. "Board" means the board of occupational therapy practice.
3. "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.
4. "Occupational therapist therapy assistant" means a person licensed to assist in the practice of occupational therapy, under this chapter, who works under the supervision of an occupational therapist.
5. "Occupational therapy practice" means the use of occupation and purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences, or the aging process in order to maximize independence, prevent disability, and maintain health or intervention designed to achieve functional outcomes that promote health, prevent injury or disability and which develop, improve, sustain, or restore the highest possible level of independence of any individual who has an injury, illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, physical disability or other disorder or condition, and occupational therapy education. The Occupational therapy encompasses evaluation, treatment, and consultation, research, and education. Specific occupational Occupational therapy services include teaching practice

includes evaluation by skilled observation, administration, and interpretation of standardized and nonstandardized tests and measurements. The occupational therapy practitioner designs and implements interventions directed toward developing, improving, sustaining, and restoring sensorimotor, neuromuscular, emotional, cognitive, or psychosocial performance components. Interventions include activities that contribute to optimal occupational performance including self-care; daily living skills; ~~developing perceptual-motor skills and sensory integrative functioning; developing skills essential for productivity, functional communication and mobility; positioning; social integration; cognitive mechanisms; enhancing play skills and prevocational and leisure capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment; using specifically designed crafts and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adapting environments for the handicapped skills; and the design, provision, and training in the use of assistive technology, devices, orthotics, or prosthetics or environmental adaptations to accommodate for loss of occupational performance.~~ The therapy Therapy may be provided individually, or in groups, ~~or through social systems to prevent secondary conditions, promote community integration, and support the individual's health and well-being within the social and cultural contexts of the individual's natural environment.~~

6. 5. "Occupational therapy aide" means a an unlicensed person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant ~~and whose activities require an understanding of occupational therapy but do not require professional or advance training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy in accordance with rules adopted by the board.~~
6. "Occupational therapy student" is a person enrolled in an accredited occupational therapy education program.

SECTION 2. AMENDMENT. Section 43-40-02 of the North Dakota Century Code is amended and reenacted as follows:

43-40-02. License required - Title - Abbreviation. A person may not practice occupational therapy or hold oneself out as an occupational therapist, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless that person is licensed under this chapter. Only individuals may be licensed under this chapter. An individual licensed under this chapter as an occupational therapist may use the title "occupational therapist" and the abbreviation "O.T.R." "OT/L" or other designation approved by the board. An individual licensed under this chapter as an occupational therapy assistant may use the title "occupational therapy assistant" and the abbreviation ~~"C.O.T.A."~~ "OTA/L" or other designation approved by the board. No other individual may use these names or abbreviations.

SECTION 3. AMENDMENT. Section 43-40-03 of the North Dakota Century Code is amended and reenacted as follows:

43-40-03. Persons and practices not affected by chapter. This chapter does not prevent or restrict the practice, services, or activities of:

1. ~~Any person licensed in this state to engage in the profession or occupation for which licensed. Services by a person licensed by the state and working within the standards and ethics of that person's profession, if that person does not represent to the public that the person is an occupational therapist or occupational therapy assistant.~~
2. Any person employed as an occupational therapist or occupational therapy assistant by the United States or any agency of it, if the person provides occupational therapy solely under the direction or control of the organization by which employed.
3. ~~Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program, if the person is designated by a title which clearly indicates that person's status as a student or trainee.~~
4. ~~Any person fulfilling the supervised fieldwork experience requirements of subsection 3 of section 43-40-08, if the experience constitutes a part of the experience necessary to meet the requirement of that section.~~
5. Any person performing occupational therapy services consultation, continuing education, inservice, or pre-service training in this state, if these services are performed for no more than ninety thirty days in a calendar year in association with an occupational therapist licensed under this chapter, if:
 - a. The person is licensed or registered under the law of another state which has licensure regulatory requirements at least as stringent as the requirements of this chapter; or
 - b. The person meets the requirements for certification as an occupational therapist registered ~~(O.T.R.)~~ or a certified occupational therapy assistant ~~(C.O.T.A.)~~, established by ~~the American~~ a national occupational therapy association certifying agency approved by the board.
6. ~~Any person employed as an occupational therapy aide.~~

SECTION 4. AMENDMENT. Section 43-40-04 of the North Dakota Century Code is amended and reenacted as follows:

43-40-04. Board of occupational therapy practice - Appointment - Meetings.

1. There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, ~~four of whom must be appointed from a list of names submitted by the North Dakota occupational therapy association,~~ all of whom must be residents of this state at the time of their appointment. ~~The persons~~ occupational therapy practitioners appointed from the list submitted by the association must have been engaged in rendering occupational therapy services to the public, teaching, or research in occupational therapy for at least three years immediately preceding their appointments. Three board members must be licensed occupational therapists. One member must be ~~an~~ a licensed occupational therapy assistant. ~~The members of the first board need not be licensed for appointment to the board but they must fulfill the requirements for licensure under this chapter. One~~

member must represent the public with an interest in the rights of the consumers of health services.

2. ~~The governor, prior to September 1, 1983, shall appoint two board members for a term of one year, two for a term of two years, and one for a term of three years. Appointments made thereafter must be for three-year terms, but no person may be appointed to serve 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 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.~~
3. ~~Prior to August 1, 1983, and annually thereafter, the association may submit at least three and not more than five names for each of the five board positions under subsection 2. If a vacancy in one of the positions exists, the association may recommend, as soon as practical, at least two and not more than three persons to fill that vacancy. The governor shall appoint, as soon as practical, one of these persons to fill the unexpired term. If the association does not provide a recommendation, the governor shall appoint, as soon as practicable, a person to the unexpired term.~~
4. ~~The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting must be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any two board members. All meetings of the board are open to the public, except that the board may hold closed sessions to approve examinations, or upon request of an applicant who fails an examination, to prepare a response indicating any reason for the applicant's failure.~~
5. ~~Members of the board may receive no compensation for their services, but are entitled to reasonable travel and other expenses incurred in the execution of their powers and duties, as set by the board.~~

SECTION 5. AMENDMENT. Section 43-40-08 of the North Dakota Century Code is amended and reenacted as follows:

43-40-08. Requirements for licensure. An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application provided by the board, ~~showing~~ demonstrating to the satisfaction of the board that the applicant:

1. ~~Is of good moral character~~ competent.
2. Will adhere to the code of ethics adopted by the board.
3. Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the board.
 - a. ~~The occupational therapy educational program must be accredited by the committee on allied health education and accreditation/American medical association in collaboration with the American occupational therapy association a national occupational therapy accrediting agency approved by the board.~~

- b. The occupational therapy assistant educational program must be ~~approved~~ accredited by the American occupational therapy association ~~a national occupational therapy accrediting agency approved by the board.~~
3. ~~4.~~ 4. Has successfully completed a period of supervised fieldwork experience ~~arranged~~ required by the ~~recognized~~ accredited educational institution where the applicant met the academic requirements required by ~~the nationally recognized professional association~~ a national occupational therapy accrediting agency approved by the board.
 - a. ~~For an occupational therapist, a minimum of six months of supervised fieldwork experience is required.~~
 - b. ~~For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.~~
 4. ~~5.~~ 5. Has passed an examination ~~as provided for in section 43-40-10~~ approved by the board.

SECTION 6. AMENDMENT. Section 43-40-10 of the North Dakota Century Code is amended and reenacted as follows:

43-40-10. ~~Foreign-trained~~ Internationally trained applicants. ~~Foreign-trained~~ Internationally trained occupational therapists and occupational therapy assistants shall satisfy the ~~examination~~ requirements of subsection 4 of section ~~43-40-08.~~ ~~Foreign-trained applicants shall furnish to the board proof of good moral character and completion of educational and supervised fieldwork requirements substantially equal~~ equivalent to those contained in section 43-40-08 before taking the examination.

SECTION 7. AMENDMENT. Section 43-40-11 of the North Dakota Century Code is amended and reenacted as follows:

43-40-11. ~~Examination~~ Application for examination or licensure - Denial.

1. ~~Only a~~ A person satisfying the requirements of subsections 4 through 3 of section 43-40-08 may apply for examination in the manner the board prescribes. The application must be accompanied by the nonrefundable fee prescribed under section 43-40-07. ~~A person who fails an examination may apply for reexamination upon payment of the prescribed fee.~~
2. ~~Each applicant for licensure must be examined by written examination as established by the American occupational therapy association to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and such other subjects as the board may require to determine the applicant's fitness to practice. The board shall approve an examination for occupational therapists and an examination for occupational therapy assistants and establish standards for acceptable performance.~~
3. Applicants for licensure must be examined at a time and place and under such supervision as the board may require. Examinations must be given at least twice each year at such places as the board may

determine. The board shall give reasonable public notice of the examination times and places.

4. Applicants may obtain their examination scores and may review their papers in accordance with any rules established by the board. The board shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice must state the reasons for rejection and explain the right to a hearing under chapter 28-32. A hearing must be requested within thirty days.

SECTION 8. AMENDMENT. Section 43-40-12 of the North Dakota Century Code is amended and reenacted as follows:

43-40-12. Waiver of requirements for licensure.

1. ~~The board shall grant a license to any person certified prior to July 1, 1983, as an occupational therapist registered (O.T.R.) or a certified occupational therapy assistant (C.O.T.A.) by the American occupational therapy association. The board may waive the examination, education, or experience requirements and grant a license to any person certified by the American occupational therapy association after July 1, 1983, if the board determines the requirements for such certification are equivalent to the requirements for licensure in this chapter.~~
2. The board may waive the examination, education, or experience requirements and grant a license to any applicant who presents proof of current licensure or registration as an occupational therapist or occupational therapy assistant in another state which requires standards for licensure or registration considered by the board to be equivalent to the requirements for licensure of this chapter.

SECTION 9. AMENDMENT. Section 43-40-13 of the North Dakota Century Code is amended and reenacted as follows:

43-40-13. Limited permit - Expiration - Renewal.

1. The board may grant a limited permit to a person who has completed the education and experience requirements of this chapter. This A limited permit allows the person to practice occupational therapy in association with under supervision of a North Dakota licensed occupational therapist. This A limited permit is valid until the person is issued a license under section 43-40-14 or until the results of the examination taken by the person are available to the board and the board decides to issue or deny a license to the person.
2. The holder of a limited permit must take the next available examination. The permit expires if the holder fails to take the next available examination. This
3. A limited permit may be renewed one time if the person has failed the examination or, with good cause as determined by the board, failed to take the next examination.

SECTION 10. AMENDMENT. Section 43-40-15 of the North Dakota Century Code is amended and reenacted as follows:

43-40-15. Renewal of license.

1. Any license issued under this chapter is subject to annual renewal and expires unless renewed in the manner prescribed by the rules of the board; ~~upon the payment of a renewal fee.~~ The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than ~~five~~ three years after its expiration.
2. ~~Upon request, the board shall grant inactive status to a licensee who:~~
 - a. ~~Does not practice as an occupational therapist or an occupational therapy assistant;~~
 - b. ~~Does not hold oneself out as an occupational therapist or an occupational therapy assistant; and~~
 - c. ~~Maintains any continuing competency requirements established by the board.~~

The board may establish additional requirements for license renewal which provide evidence of continuing competency.

SECTION 11. AMENDMENT. Section 43-40-16 of the North Dakota Century Code is amended and reenacted as follows:

43-40-16. Suspension and revocation of license - Refusal to renew.

1. The board may deny a license, refuse to renew a license, suspend a license, ~~or~~ revoke a license; or may impose probationary conditions if the licensee or applicant for license has been found guilty of unprofessional conduct ~~which has endangered or is likely to endanger the health, welfare, or safety of the public.~~ Unprofessional conduct includes:
 - a. Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.
 - b. Being guilty of unprofessional conduct as defined by the rules adopted by the board, or violating any code of ethics adopted by the ~~American occupational therapy association~~ board.
 - c. Being convicted of an offense, as defined by section 12.1-01-04, that the board determines has a direct bearing upon a person's ability to serve the public as an occupational therapist or an occupational therapy assistant or, following conviction of any offense, the board determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - d. Violating any lawful order or rule rendered or adopted by the board.
 - e. Violating this chapter or the rules promulgated by the board.
 - f. A pattern of inappropriate practice as an occupational therapist or occupational therapy assistant.

2. After review of the complaint, the licensee's response, and information obtained in the investigation, the board shall determine if there is a reasonable basis to believe the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines there is a reasonable basis to believe the allegations are true and the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall notify the complaining party and the licensee in writing.

SECTION 15. A new section to chapter 43-40 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. The board may impose a fee against any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative action resulting in disciplinary action, including the cost of investigation, the amount paid for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses. When applicable, a license may be suspended until the costs are paid to the board.

SECTION 16. REPEAL. Section 43-40-09 of the North Dakota Century Code is repealed.

Approved March 31, 1999
Filed March 31, 1999

OFFICES AND OFFICERS

CHAPTER 395

HOUSE BILL NO. 1359

(Representatives Dorso, Clark)

NEPOTISM

AN ACT to amend and reenact sections 34-11.1-04.1, 44-04-09, and 44-04-10 of the North Dakota Century Code, relating to the state nepotism law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-11.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

34-11.1-04.1. Discrimination on basis of marital status in state employment prohibited - Exception. Each state employee is, if otherwise qualified, entitled to work with that state employee's spouse. A state agency may not discriminate against an employee or an applicant for employment, with respect to working conditions, work place assignment, or other privileges of employment, merely because the spouse of that employee or applicant is also an employee of that state agency. ~~However, the prohibition does not apply to employment of the spouse of a person who has the power to hire or fire, or to make evaluations of performance, with respect to the position involved.~~ Compliance with section 44-04-09 is not discrimination under this section.

SECTION 2. AMENDMENT. Section 44-04-09 of the North Dakota Century Code is amended and reenacted as follows:

44-04-09. Nepotism. ~~No head of any executive or administrative department, either elective or appointive, of this A state official or state employee, in the exercise of that official's or employee's duties, may appoint his wife or her husband, as the case may be not serve in a supervisory capacity over, or enter a personal service contract with, that official's or employee's parent by birth or adoption, spouse, son, or daughter by birth or adoption, stepchild, brother, or sister, to any position under the control or direction of said head of such department by whole or half blood or by adoption, brother-in-law or sister-in-law, or son-in-law or daughter-in-law. As used in this section, "supervisory capacity" means the authority to appoint, employ, hire, assign, transfer, promote, evaluate, reward, discipline, demote, or terminate. As used in this section, "evaluate" does not include evaluations by peers or subordinates. This section does not apply to an employment relationship or contract entered before the effective date of this Act; nor to any employment relationship or contract entered before the state official or employee assumed the supervisory capacity; nor to any temporary work arrangement necessary to meet a critical and urgent agency need.~~

SECTION 3. AMENDMENT. Section 44-04-10 of the North Dakota Century Code is amended and reenacted as follows:

44-04-10. Violation of provisions against nepotism - Penalty. Any moneys paid out, in violation of section 44-04-09, must be deducted from the salary of the ~~head of the department~~ hiring or contracting state official or state employee.

Approved March 31, 1999

Filed March 31, 1999

CHAPTER 396

SENATE BILL NO. 2076

(Industry, Business and Labor Committee)

(At the request of the State Board of Social Work Examiners)

OCCUPATIONAL AND PROFESSIONAL BOARD INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact section 44-04-18.1 of the North Dakota Century Code, relating to confidentiality of personal information maintained by occupational and professional boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by professional boards.

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any person employed by a public entity.
2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, phone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.
3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1 is exempt.
4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, permit, or registration issued by a state occupational or professional board, association, or commission.

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 397**SENATE BILL NO. 2141**

(Education Committee)

(At the request of the State Board of Higher Education)

**BOARD OF HIGHER EDUCATION RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to confidentiality of records of board of higher education and university system officers and employees.

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:

Fundraising and donor records of board of higher education and university system exempt. Any donor or prospective donor name, address, telephone number, tax or financial record, or other personal information received or retained by a board of higher education or university system officer or employee is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 398**HOUSE BILL NO. 1138**

(Education Committee)

(At the request of the State Board of Higher Education)

STUDENT HEALTH RECORDS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to confidentiality of patient records at college and university student health services and university system clinics.

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 patient records at student health services and university system clinics. Any patient record of a patient at a state college or university student health service, university of North Dakota medical center or family practice center, or other university system medical center or clinic is confidential.

Approved March 15, 1999

Filed March 15, 1999

CHAPTER 399**SENATE BILL NO. 2313**

(Senators St. Aubyn, Heitkamp, Holmberg)
(Representatives Bernstein, Nottestad, Price)

**CONSUMER COMPLAINT INFORMATION
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to personal and financial information submitted to a state agency in a consumer complaint.

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:

Personal and financial information in a consumer complaint. Personal and financial information submitted to a state agency as part of a consumer complaint, or gathered pursuant to an investigation of a consumer complaint, is an exempt record as defined in subsection 5 of section 44-04-17.1. For purposes of this section, "personal and financial information" means the home address, home telephone number, social security number, consumer report, and credit, debit, or electronic fund transfer card number of the complainant and any person on whose behalf the complaint is made, and any account number of a business or individual at a bank, brokerage, or other financial institution. "Personal and financial information" does not include the nature of the complaint, name of the complainant or any person on whose behalf the complaint was submitted, or the address or telephone number of the business that is the subject of the complaint.

Approved March 15, 1999
Filed March 16, 1999

CHAPTER 400**SENATE BILL NO. 2118**

(Political Subdivisions Committee)
(At the request of the Secretary of State)

DEED ACKNOWLEDGMENT FEES

AN ACT to amend and reenact section 44-05-03 of the North Dakota Century Code, relating to deed acknowledgment fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-05-03 of the North Dakota Century Code is amended and reenacted as follows:

44-05-03. Fee for taking acknowledgment and administering an oath. Any officer authorized by law to take and certify acknowledgment of a deed or other instrument is entitled to charge and receive not more than ~~one dollar~~ five dollars.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 401

HOUSE BILL NO. 1126

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

NOTARY PUBLIC COMMISSION REVOCATION AND PROHIBITIONS

AN ACT to amend and reenact sections 44-06-11 and 44-06-13.1 of the North Dakota Century Code, relating to filing of notice of revocation of a notary commission and prohibited acts of a notary public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-11. Revocation of notary commission - Notice. In case the commission of a person appointed as a notary is subject to a revocation action, the secretary of state shall give notice thereof by mail to that person immediately ~~and to the clerk of the district court of the proper county,~~ using the procedures of chapter 28-32. The notice may provide that the person may not perform any notarial acts during the pendency of the revocation proceeding. A notary whose commission is revoked may be denied a new commission for a period of up to six years following the date of revocation.

SECTION 2. AMENDMENT. Section 44-06-13.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-13.1. Prohibited acts - Penalty. A notary public may not notarize a signature on a document if:

1. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
2. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. The notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
5. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized.

A notary public who violates this section is guilty of an infraction and the notary public's commission must be revoked by the secretary of state using the procedure under chapter 28-32.

Approved March 22, 1999

Filed March 22, 1999

CHAPTER 402**HOUSE BILL NO. 1341**

(Representatives Kliniske, Delmore, Fairfield)
(Senators Heitkamp, W. Stenehjem, Wardner)

STATE EXPENSE REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to state officer and employee expense reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 44-08-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
 - a. First quarter is from six a.m. to twelve noon and the sum must be four dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be six dollars.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ten dollars.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~thirty-nine~~ forty-two dollars plus any additional applicable state or local taxes.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 403

SENATE BILL NO. 2108

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE LODGING EXPENSE PREPAYMENT

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to prepayment and direct billing of out-of-state lodging expenses for state officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is created and enacted as follows:

Prepayment and direct billing of out-of-state lodging expenses of state officers and employees. The office of management and budget shall seek to obtain sales tax exemptions for state employee travel lodging expense from all other states and the District of Columbia. If available from other states, the office of management and budget shall file exemption records, documents, or numbers for use by state agencies. Whenever any state agency, board, bureau, or institution makes out-of-state travel plans involving a lodging expense, the agency may contact the office of management and budget to determine if a sales tax exemption has been obtained from the destination state or states. If an exemption has been obtained, and if travel plans are sufficiently certain, the agency, board, bureau, or institution may obtain the required documentation from the office of management and budget and arrange with the out-of-state lodging provider to have the agency prepay the lodging expense or to have the lodging expense directly billed to the agency and obtain the benefit of the sales tax exemption.

Approved April 7, 1999

Filed April 8, 1999

PARTNERSHIPS

CHAPTER 404

HOUSE BILL NO. 1372

(Representatives Pollert, Disrud, Haas, Koppang)
(Senators Klein, Wanzek)

FICTITIOUS NAME RENEWALS

AN ACT to amend and reenact section 45-11-04.1 of the North Dakota Century Code, relating to fictitious name certificate renewals filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-04.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-04.1. Renewal. ~~Any~~ A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing; ~~except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter.~~ The statement of renewal must be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership or change of address of the principal place of business, the statement of renewal may not be filed until the fees required for these changes are paid as required by section 45-11-05.1 or 45-11-08.1. If ~~any~~ a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of ~~such~~ the cancellation must be mailed to the address of the principal place of business.

Approved March 25, 1999
Filed March 25, 1999

PROPERTY

CHAPTER 405

SENATE BILL NO. 2243

(Senators Wardner, Kinnoin, Lyson)
(Representatives Glassheim, Nottestad, L. Thoreson)

DEED RECORDING

AN ACT to create and enact a new section to chapter 47-19 of the North Dakota Century Code, relating to recording deeds and contracts for deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-19 of the North Dakota Century Code is created and enacted as follows:

Deeds and contracts for deeds to include name and address of drafter of legal description. The register of deeds may not record a deed or contract for deed containing a metes and bounds legal description which affects the title to or possession of real property that otherwise may be recorded under this chapter unless the name and address of the individual who drafted the legal description contained in the deed or contract for deed appears on the instrument in a legible manner. A deed or contract for deed complies with this section if it contains a statement substantially in the following form: "The legal description was prepared by _____ (name) _____ (address) or obtained from a previously recorded instrument." This section does not apply to any instrument executed before January 1, 2000, or any instrument executed or acknowledged outside the state. The validity and effect of the record of any instrument in a register of deeds' office may not be lessened or impaired by the fact the instrument does not contain the statement required by this section.

Approved March 29, 1999
Filed March 29, 1999

PUBLIC BUILDINGS

CHAPTER 406

HOUSE BILL NO. 1418

(Representatives Clark, Carlson)

PUBLIC IMPROVEMENT CONTRACT BIDS

AN ACT to amend and reenact section 48-01.1-06 of the North Dakota Century Code, relating to public improvement contract bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-01.1-06. Bid requirements for public buildings. Multiple prime bids for the general, electrical, and mechanical portions of a project are required when any individual general, electrical, or mechanical contract or any combination of individual contracts is in excess of one hundred thousand dollars. The governing body may also allow submission of single prime bids or bids for other portions of the project at its discretion. The governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest and best multiple bids for the project.

Approved March 19, 1999

Filed March 22, 1999

CHAPTER 407**HOUSE BILL NO. 1173**

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

CENTRAL MAILING BUREAU

AN ACT to amend and reenact sections 48-06-04 and 54-06-18 of the North Dakota Century Code, relating to staffing the central mailing bureau and obtaining postage meters by the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-06-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

48-06-04. Purchasing supplies - Employing mail clerks - Office of management and budget. The director of the office of management and budget shall provide a suitable room and shall employ a mailing clerk and an assistant mailing clerk, if the necessary mailing bureau staff. The director also shall purchase postage meter machines and such other equipment, materials, and supplies as are necessary for the purpose of carrying out the provisions of this chapter.

SECTION 2. AMENDMENT. Section 54-06-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-18. Director to authorize postage meters. ~~No~~ A state agency, department, or institution, except the institutions under the control and management of the board of higher education, may not obtain or use a postage meter unless authorized to do so by the director of the office of management and budget. ~~All state agencies, departments, and institutions which obtain or use a postage meter prior to July 1, 1975, shall apply to the director for such authorization within one month after July 1, 1975.~~ Each state agency, department, or institution which is authorized by the director to obtain or use a postage meter shall maintain such records as the director may require and shall allow the director to inspect such records upon request. The office of management and budget shall keep a record of the identification numbers of all postage meters authorized for usage.

Approved March 16, 1999
Filed March 16, 1999

PUBLIC UTILITIES

CHAPTER 408

HOUSE BILL NO. 1272

(Representatives Berg, Carlson, Keiser)
(Senator Lee)

LOCOMOTIVE WARNING DEVICE SOUNDING

AN ACT to amend and reenact sections 49-11-21 and 49-11-22 of the North Dakota Century Code, relating to the sounding of a warning device on a locomotive engine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-11-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-11-21. Warning device sounded at crossing by locomotive - Exception. A warning device must be placed on each locomotive engine and must be sounded at a distance of at least eighty rods [402.34 meters] from the place where the railroad crosses any other road or street and must continue to be sounded until it has crossed the road or street. The governing body of a city may adopt a quiet zone ordinance, as allowed by federal law and implemented under the federal railroad administration's supplemental safety measures for at-grade crossings, prohibiting a locomotive engine from sounding a warning device at crossings within the quiet zone under regular crossing conditions. A crew member may sound a warning device as determined appropriate by that crew member.

SECTION 2. AMENDMENT. Section 49-11-22 of the North Dakota Century Code is amended and reenacted as follows:

49-11-22. Liability for failure of locomotive to sound bell, horn, or whistle at crossing. The A person owning that owns or has a leasehold interest in a locomotive which that fails to sound its warning device at any road or street crossing as required by section 49-11-21 shall be is guilty of an infraction and shall be is liable for all damages which shall be that are sustained by any person by reason of such the neglect. If a crew member of a locomotive does not sound a warning device at a crossing for which the sounding of a warning device is prohibited under a city ordinance, any crew member or person with any interest in the locomotive is not liable for any damages sustained by a person by reason of the failure to sound a warning device. This section does not exempt a railroad corporation from any liability created under chapter 49-16 or the Federal Employers' Liability Act [45 U.S.C. 51 et seq.] for injuries to its employees or agents.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 409**SENATE BILL NO. 2435**

(Senator Heitkamp)

**TRAIN CREW MOTOR VEHICLE OPERATOR LICENSE
EXEMPTION**

AN ACT to provide an exemption from motor vehicle operator's license provisions for train crew members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Train crew exemption. In any circumstances involving an accident between a pedestrian or vehicle and a locomotive or part of a train in which the engineer or any other crew member of the train is interviewed by a law enforcement officer, the engineer or any other crew member may not be required to furnish a motor vehicle operator's license and no citation involving the operation of a train in violation of title 39 may be issued against the engineer or any other crew member of the train.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 410

HOUSE BILL NO. 1451

(Representative Grosz)
(Senators Nething, Tomac)

TELECOMMUNICATIONS DEFINITIONS AND FEES

AN ACT to create and enact sections 49-21-23, 49-21-24, 49-21-25, 49-21-26, and 49-21-27 of the North Dakota Century Code, relating to right-of-way fees; to amend and reenact section 49-21-01 and subdivision g of subsection 3 of section 49-23-04 of the North Dakota Century Code, relating to telecommunications definitions and time periods under the one-call excavation notice system; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Section 49-21-01 of the 1997 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 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;
 - 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:
 - a. In the case of group I telecommunications companies, a factor determined annually as the lower of:

²⁷² Section 49-21-01 was also amended by section 3 of Senate Bill No. 2008, chapter 30, and section 2 of Senate Bill No. 2420, chapter 411.

- (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 measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
 - a. Switched access;
 - b. Any new product or service offered in North Dakota after July 1, 1989, 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. 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. Installation of the service connection for essential services from the end user's premises to the local exchange network;
 - h. 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. "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. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
 - ~~8.~~ 9. "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.~~ 9. "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.~~ 10. "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.
- ~~40.~~ 11. "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.
12. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
- ~~44.~~ 13. "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.
- ~~42.~~ 14. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
- ~~43.~~ 15. "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. Section 49-21-23 of the North Dakota Century Code is created and enacted as follows:

49-21-23. Fees. Unless the governing body of a political subdivision has submitted to the qualified electors of that political subdivision the question of whether to impose a fee other than a fee for management costs and a majority of the voters approved the fee, a political subdivision may not impose after December 31, 1998, any fee to recover from a telecommunications company for the use of its right

of way, other than a fee for its management costs. If requested by a political subdivision, in order to accomplish a necessary public improvement on the right of way, a telecommunications company promptly shall remove its facilities from the public right of way or shall relocate or adjust its facilities within the public right of way at no cost to the political subdivision. Necessary public improvements are limited to construction and maintenance activities directly related to improved transportation and safety. A political subdivision may recover from a telecommunications company only those management costs caused by the telecommunications company activity in the public right of way. A fee or other obligation under this section must be imposed on a competitively neutral basis. When a political subdivision's management costs cannot be attributed to only one entity, those costs must be allocated among all users of the public rights of way, including the political subdivision itself. The allocation must reflect proportionately the costs incurred by the political subdivision as a result of the various types of uses of the public right of way. This section does not prohibit the collection of a franchise fee as permitted in section 49-21-26.

SECTION 3. Section 49-21-24 of the North Dakota Century Code is created and enacted as follows:

49-21-24. In-kind services. A political subdivision, in lieu of a fee imposed under section 49-21-23, may not require in-kind services by a telecommunications company right-of-way user or require in-kind services as a condition of the use of the political subdivision's public right of way.

SECTION 4. Section 49-21-25 of the North Dakota Century Code is created and enacted as follows:

49-21-25. Arbitration.

1. A telecommunications company that is denied the use of or access to a political subdivision right of way, that has its right-of-way permit revoked, or that believes that the fees imposed on that company by the political subdivision do not conform to the requirements of section 49-21-23 may request in writing that the denial, revocation, or fee imposition be reviewed by the governing body of the political subdivision. The governing body of the political subdivision shall act within thirty days of the request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.
2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the telecommunications company may do either of the following:
 - a. With the consent of the governing body, submit the matter to final, binding arbitration. Binding arbitration must be before an arbitrator selected by the political subdivision and the telecommunications company. If the parties are unable to agree on an arbitrator, the matter must be resolved by the three-person arbitration panel made up of one arbitrator selected by the political subdivision, one arbitrator selected by the telecommunications company, and one arbitrator selected by the other two arbitrators. The cost of a single arbitrator must be paid equally by the political subdivision and the telecommunications company. If a three-person

arbitration panel is selected, each party shall pay the cost of its own arbitrator, and the parties shall jointly pay the cost of the third arbitrator and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

- b. Bring an action in district court to review a decision of the governing body made under this section.

SECTION 5. Section 49-21-26 of the North Dakota Century Code is created and enacted as follows:

49-21-26. Franchise ordinance not superseded. Sections 49-21-23, 49-21-24, and 49-21-25 do not modify or supersede the rights and obligations of a political subdivision and the telecommunications company established by the terms of any existing franchise. A city that collects a city franchise fee under a franchise may not collect a fee from that entity under section 49-21-23. A political subdivision that collects a fee prohibited by section 49-21-23 on January 1, 1999, may continue to collect that fee.

SECTION 6. Section 49-21-27 of the North Dakota Century Code is created and enacted as follows:

49-21-27. Cost recovery. A telecommunications company that is assessed either management costs by a political subdivision pursuant to section 49-21-23 or a city franchise fee pursuant to section 49-21-26 is entitled to recover those costs. If the telecommunications company serves customers within the boundaries of the political subdivision imposing the management costs, the costs may be recovered only from those customers.

²⁷³ **SECTION 7. AMENDMENT.** Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

SECTION 8. RETROACTIVE APPLICATION. Sections 1 through 6 of this Act apply retroactively to January 1, 1999.

Approved April 8, 1999
Filed April 8, 1999

²⁷³ Section 49-23-04 was also amended by section 28 of Senate Bill No. 2015, chapter 37, and section 1 of Senate Bill No. 2265, chapter 418.

CHAPTER 411

SENATE BILL NO. 2420

(Senators Wardner, Tallackson, Robinson)
(Representatives Bernstein, Kerzman, Poolman)

TELECOMMUNICATIONS REGULATION

AN ACT to create and enact three new sections to chapter 49-21, five new subsections to section 49-21-01, a new subsection to section 49-21-01.1, subsections 5, 6, and 7 of section 49-21-01.3, and subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the North Dakota Century Code, relating to telecommunications facilities, regulation of telecommunications services, telecommunications service prices, and powers of the public service commission; to amend and reenact sections 49-02-01.1, 49-21-04, 49-21-07, 49-21-08.1, and 49-21-10.2 of the North Dakota Century Code, relating to jurisdiction of the public service commission, telecommunications price schedules, discrimination, dialing parity, and telecommunications service quality rules; and to repeal section 49-21-02.1 of the North Dakota Century Code, relating to exemptions from public service commission regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁴ **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1997 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 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, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4 ~~and~~, 49-21-08, sections 10, 11, and 12 of this Act, and ~~is subject to subsection~~ subsections 6 through 14 of section 49-02-02 49-21-01.7 and to 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.

²⁷⁵ **SECTION 2.** Five new subsections to section 49-21-01 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

²⁷⁴ Section 49-02-01.1 was also amended by section 2 of House Bill No. 1169, chapter 414.

²⁷⁵ Section 49-21-01 was also amended by section 3 of Senate Bill No. 2008, chapter 30, and section 1 of House Bill No. 1451, chapter 410.

"Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.

"Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.

"Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].

"Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.

"Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.

SECTION 3. A new subsection to section 49-21-01.1 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Private line transport service.

SECTION 4. Subsections 5, 6, and 7 of section 49-21-01.3 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

5. The monthly price of residence service for group I telecommunications companies defined in subsection 2 of section 49-21-01 may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
6. The commission may investigate an increased price allowed pursuant to subsection 5 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at

or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.

7. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 5. Subsections 7, 8, 9, 10, 11, 12, 13, and 14 of section 49-21-01.7 of the 1997 Supplement to the North Dakota Century Code are created and enacted as follows:

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are different or greater than obligations imposed under the act.

SECTION 6. AMENDMENT. Section 49-21-04 of the 1997 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;
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~~ twenty 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 7. AMENDMENT. Section 49-21-07 of the 1997 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. 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 and private line services shall cover in its price for message toll 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 introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 8. AMENDMENT. Section 49-21-08.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-08.1. ~~(Effective until July 31, 1999) 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~~ 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 prior to

January 1, 2000. Every local exchange carrier shall provide intraLATA dialing parity no later than January 1, 2000.

SECTION 9. AMENDMENT. Section 49-21-10.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-10.2. 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. The commission may not adopt any rule or order under this section applicable to retail services unless the standards of service required by the rule or order are applicable to all telecommunications companies providing similar service in the relevant market area.

SECTION 10. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Construction of Facilities - Cost recovery.

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred to comply with a commission order, including any order issued under section 49-21-10.2, for construction modification or extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:
 - a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
 - b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
 - c. Costs for which some other recovery treatment is specifically provided in federal or state law.

SECTION 11. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Prohibited acts - Arbitration.

1. A telecommunications company may not:
 - a. Discriminate against another provider of telecommunications services by refusing or delaying access to the company's services;
 - b. Discriminate against another provider of telecommunications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the telecommunications company provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the telecommunications company's network is an essential facility if all of the following apply:
 - (1) Competitors cannot practically or economically duplicate the facility, feature, function, or capability or obtain the facility, feature, function, or capability from another source.
 - (2) The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.
 - (3) Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.
 - (4) The facility, feature, function, or capability will enable competition; or
 - c. Degrade the quality of access or service provided to another provider of telecommunications services.
2. A claim that a telecommunications company has violated this section may be resolved by arbitration or by a complaint filed with the commission. Arbitration of a claim must be conducted by a single arbitrator engaged in the practice of law under the rules of the American arbitration association. All expedited procedures prescribed by the American arbitration association rules apply. The arbitrator's award is final and binding and may be entered in any court having jurisdiction thereof. A complaint filed with the commission must be referred to the office of administrative hearings for hearing and issuance of recommended findings of fact, conclusions of law, and an order pursuant to chapter 28-32. Each party shall bear its own costs and attorney's fees and shall equally share in the fees and expenses of the arbitration or administrative hearing.

SECTION 12. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Competitive local exchange companies. All competitive local exchange companies are subject to the requirements of this chapter regarding purchase of essential telecommunications services, section 49-21-01.4; access code number usage, section 49-21-01.5; call identification services, section 49-21-01.6; cross subsidization, section 49-21-02.2; price schedules, sections 49-21-04 and 49-21-05; price complaints,

section 49-21-06; discrimination, section 49-21-07; dialing parity, section 49-21-08.1; connections, sections 49-21-09 and 49-21-10; refunds, section 49-21-10.1; and quality of service, section 49-21-10.2.

SECTION 13. REPEAL. Section 49-21-02.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 17, 1999

Filed March 17, 1999

CHAPTER 412**SENATE BILL NO. 2094**

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

ACCESS CODE NUMBER USAGE

AN ACT to amend and reenact section 49-21-01.5 of the North Dakota Century Code, relating to access code number usage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

49-21-01.5. Access code number usage. A person who, in the ordinary course of operations, makes telephones available to the public or to transient users of that person's premises, for intrastate telephone calls using a provider of operator services shall ensure that each of its telephones presubscribed to a provider of operator services allows the consumer to use "~~800~~", "toll free 8XX", "950", or "~~10XXX 0+~~" "101XXXX 0+" access code numbers to obtain access to the provider of operator services desired by the consumer. Each such person shall ensure that no charge to the consumer for using an "~~800~~", "toll free 8XX", "950", or "~~10XXX 0+~~" "101XXXX 0+" access code number is greater than the amount charged for calls placed using the presubscribed provider of operator services.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 413**HOUSE BILL NO. 1450**
(Representatives Grosz, Mahoney)
(Senators Nething, Tomac)**ELIGIBLE TELECOMMUNICATION CARRIERS**

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to eligible telecommunication carriers.

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:

Eligible telecommunication company requirements. A telecommunications company may not be an eligible telecommunications carrier unless the company offers all services supported by federal universal service mechanisms throughout the study area.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 414

HOUSE BILL NO. 1169

(Natural Resources Committee)

(At the request of the Public Service Commission)

UNAUTHORIZED TELECOMMUNICATIONS SERVICE

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to unauthorized telecommunications service; to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

Unauthorized telecommunications service.

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k. The cease and desist order must be:
 - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;

- b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.
4. A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter 51-15.

²⁷⁶ **SECTION 2. AMENDMENT.** Section 49-02-01.1 of the 1997 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 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, that is not operated for profit, that is operated as a nonprofit, cooperative, or mutual telecommunications company or is a telecommunications company having fewer than eight thousand local exchange subscribers. However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-01.4 ~~and~~, 49-21-08, and section 1 of this Act and is subject to subsection 6 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.

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

Approved March 25, 1999
Filed March 25, 1999

²⁷⁶ Section 49-02-01.1 was also amended by section 1 of Senate Bill No. 2420, chapter 411.

CHAPTER 415

SENATE BILL NO. 2234

(Senators Wanzek, Christmann, Heitkamp)
(Representatives Nelson, Nichols)

TELECOMMUNICATIONS PRICES

AN ACT to amend and reenact section 49-21-06 of the North Dakota Century Code, relating to telecommunications prices; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-06 of the 1997 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 complain to the commission, or the commission on its own motion may complain and begin investigation, of the reasonableness, fairness, or adequacy of any price for any essential or nonessential service. Any notice and hearing by the commission will be provided in accordance with 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 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.~~ 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 authorize the commission to set aside any price in effect on January 1, 1999, for intrastate switched access service provided by any rural telephone company, as defined under Public Law No. 104-104 [110 Stat. 56; 47 U.S.C. 153 (37)], upon complaint by an interexchange telecommunications company that the price is unreasonably high, except a price for intrastate switched access service in an exchange may be set aside to the extent it is unreasonably high as a consequence of recovery of costs of intrastate switched access service in that exchange from any explicit federal or state mechanisms to preserve and advance universal service; a sale, assignment, or other transfer of ownership or control of that exchange after January 1, 1999; or a reduction of prices after January 1, 1999, for any other services provided in that exchange.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved March 23, 1999
Filed March 23, 1999

CHAPTER 416

HOUSE BILL NO. 1050

(Legislative Council)

(Regulatory Reform Review Commission)

REGULATORY REFORM REVIEW COMMISSION

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to a regulatory reform review commission.

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:

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 1999 and 2003 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 2000 and 2002. The regulatory reform review commission may review the effects of federal universal service support mechanisms on telecommunications companies and consumers in this state and may review the preservation and advancement of universal service in this state, consistent with the Communications Act of 1934 [47 U.S.C. 151 et seq.], as amended by the Telecommunications Act of 1996 [Pub. L. 104-104; 110 Stat. 56] during these interims and may include any findings and recommendations in its reports to the legislative council. 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. 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 the public service commission staff providing technical assistance while carrying out their duties.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 417**HOUSE BILL NO. 1445**

(Representatives Carlson, Huether, Klein)
(Senators Christmann, Naaden, Robinson)

**ELECTRICITY TRANSMISSION AND DISTRIBUTION
LINE DIFFERENTIATION**

AN ACT to create and enact a new section to chapter 49-21.1 of the North Dakota Century Code, relating to differentiation between electricity transmission lines and electricity distribution lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21.1 of the North Dakota Century Code is created and enacted as follows:

Electricity transmission and distribution lines - Differentiation. Except for purposes of transmission facility siting under chapter 49-22 and regulatory accounting including the determination of the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution, for purposes of this title and chapters 57-33 and 57-33.1, lines designed to operate at a voltage of 41.6 kilovolts or more are transmission lines, and lines designed to operate at a voltage less than 41.6 kilovolts are distribution lines.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 418

SENATE BILL NO. 2265

(Senators St. Aubyn, Heitkamp, Lyson)
(Representatives Carlson, Keiser, Nottestad)

ONE-CALL EXCAVATION NOTICE SYSTEM TIME PERIODS

AN ACT to amend and reenact subdivision g of subsection 3 of section 49-23-04 of the North Dakota Century Code, relating to time periods under the one-call excavation notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁷ **SECTION 1. AMENDMENT.** Subdivision g of subsection 3 of section 49-23-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- g. An excavator may not use a location more than ~~seventy-two hours~~ ten days, or any extension of that period, after the planned excavation date unless the excavator has made previous arrangements with the operators affected.

Approved March 3, 1999

Filed March 4, 1999

²⁷⁷ Section 49-23-04 was also amended by section 28 of Senate Bill No. 2015, chapter 37, and section 7 of House Bill No. 1451, chapter 410.

PUBLIC WELFARE

CHAPTER 419

SENATE BILL NO. 2038

(Legislative Council)

(Budget Committee on Long-Term Care)

TRAUMATIC BRAIN-INJURED FACILITY REPORT

AN ACT to provide for reports to the legislative council regarding the establishment of a traumatic brain-injured facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TRAUMATIC BRAIN-INJURED FACILITY REPORT TO THE LEGISLATIVE COUNCIL. The director of the department of human services shall report periodically to the legislative council, or an interim committee designated by the legislative council, during the 1999-2000 interim regarding the establishment of a traumatic brain-injured facility in western North Dakota. The reports must include information regarding the number of beds available and the location of any beds available for conversion to a traumatic brain-injured facility in western North Dakota and the status of the number of beds that have been converted for a traumatic brain-injured facility in western North Dakota.

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 420**SENATE BILL NO. 2157**

(Political Subdivisions Committee)

(At the request of the Department of Human Services)

**HUMAN SERVICES STUTSMAN COUNTY LAND
CONVEYANCE**

AN ACT to authorize the department of human services to convey certain land in Stutsman County, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land authorized.

1. The department of human services may convey the land described in this section to the city of Jamestown, North Dakota, for the price and on the terms as determined by the department of human services. The land to be conveyed is a part of the grounds of the state hospital described as follows:

A tract of land located within Government Lots 2 and 3 within the North Half (N 1/2) of Section 5, Township 139 North, Range 63 West of the Fifth Principal Meridian, Stutsman County, North Dakota being more particularly described as follows:

Commencing at the northeast corner of said Section 5; thence $S0^{\circ}04'17''E$, along the east line of said Section 5, 31.80 feet to a point on the southerly right-of-way line of Interstate 94, said point being 160.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence $N89^{\circ}41'07''W$, along said southerly right-of-way line, 1783.06 feet; thence $S0^{\circ}18'53''W$, 50.00 feet to a point on said southerly right-of-way line that is 210.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence $N89^{\circ}41'07''W$, along said southerly right-of-way line, 586.59 feet to the northwest corner of Auditor's Lot 5-2, said point being the point of beginning; thence $S0^{\circ}18'53''W$, along the westerly line of said Auditor's Lot 5-2, 100.00 feet; thence $N89^{\circ}41'07''W$, 91.71 feet; thence $S0^{\circ}18'53''W$, 130.00 feet; thence $N89^{\circ}41'07''W$, 98.90 feet to the point of beginning of a $1^{\circ}04'59''$ curve to the left, said curve having a chord bearing of $S84^{\circ}19'00''W$ and a chord length of 1105.50 feet and said point being 440.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence, along said curve to the left and parallel with the centerline of the median of said Interstate 94, an arc length of 1107.52 feet to a point on the northeasterly line of Auditor's Lot 5-3; thence $N32^{\circ}22'27''W$, along said northeasterly line of Auditor's Lot 5-3, 106.76 feet to the point of beginning of a $1^{\circ}03'47''$ curve to the right, said curve having a chord bearing of $N84^{\circ}06'58''E$ and a chord length of

1163.90 feet and said point being 340.00 feet, measured at right angles from the centerline of the median of said Interstate 94; thence, along said curve to the right and parallel with the centerline of the median of said Interstate 94, an arc length of 1166.18 feet; thence N0°18'53"E, 130.00 feet to a point on the southerly right-of-way line of said Interstate 94 that is 210.00 feet, measured at right angles, from the centerline of the median of said Interstate 94; thence, S89°41'07"E, along said southerly right-of-way line, 190.61 feet to the point of beginning. Said tract of land contains 3.34 acres more or less.

2. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 421

SENATE BILL NO. 2114

(Human Services Committee)

(At the request of the Department of Human Services)

TEMPORARY ASSISTANCE TO NEEDY FAMILIES

AN ACT to amend and reenact subsection 2 of section 50-01.2-00.1 and subsection 1 of section 50-09-29 of the North Dakota Century Code, relating to local expenses of administration and requirements for temporary assistance for needy families; to authorize the department of human services to negotiate a pilot project for the state's participation in direct funding and administration of tribal temporary assistance to needy families; to provide for a legislative council study; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-01.2-00.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Local expenses of administration" includes costs for personnel, space, equipment, computer software, ~~costs associated with achieving caseload ratios of sixty-five cases to one worker,~~ materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include initial acquisition of computers and related hardware approved by the department for the training, education, employment, and management program, custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996, or, unless agreed to by the county social service board, any costs related to pilot programs before the programs are implemented on a statewide basis.

SECTION 2. AMENDMENT. Subsection 1 of section 50-09-29 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2, 3, and 5 through 7, the department of human services, in its administration of temporary assistance for needy families in the form of the training, education, employment, and management program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;

- c. Exempt up to twenty percent of the caseload from the requirements of subdivision b due to mental or physical disability of a parent or child, ~~or~~ mental or physical incapacity of a parent, or other hardship;
- d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
- e. Unless otherwise required by federal law, and except as provided in subdivision m, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996, for the first five years of residence in the United States, and after five years of residence, until the immigrant has ten years of work history, provide benefits only after considering the income and assets of the immigrant's sponsor;
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department not ~~exceeding~~ to exceed five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
- g. Seek approval of appropriate federal officials, and, if approved, use a simplified food stamp program to provide food stamp benefits to eligible households receiving temporary assistance for needy families;
- h. Exclude one motor vehicle of any value in determining eligibility;
- i. Require work activities as defined in section 14-08.1-05.1 for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child, or mental or physical incapacity of a parent;
- j. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- k. Conduct a program, designed to reach state and local law enforcement officials, the education system, and relevant counseling services, which provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men;
- l. Afford otherwise eligible households that have resided in this state less than twelve months benefits subject to the lifetime limit of the household's immediately previous state of residence;
- m. Provide benefits to otherwise eligible noncitizens who are lawfully present in the United States as refugees, asylees, veterans, active duty military personnel, spouses and dependents of active duty military personnel, and Cuban-Haitian entrants;
- n. Establish and enforce standards against program fraud and abuse;

- o. Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
- p. Provide an employment placement program;
- q. Implement, as soon as practicable, an electronic fund transfer system;
- r. ~~Not exempt~~ Consider exempting funds in individual development accounts;
- s. ~~Sanction parents who, without good cause, fail to ensure dependent minor children attend school unless the child has received a high school diploma or equivalent~~ Determine the unemployment rate of adults living on an Indian reservation by using the unemployment data provided by job service North Dakota;
- t. When appropriate, require household members to complete high school;
- u. Exempt single parents from required work activities as defined in section 14-08.1-05.1 if the exempted parent has a child under four months of age;
- v. Count only approved work activities as defined in section 14-08.1-05.1 for the purpose of measuring work participation rates;
- w. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- x. Provide for progressive sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- y. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- z. Require each household to participate in developing an individual responsibility plan and provide for progressive sanctions, including termination of assistance to the household, if adult ~~and~~ or minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
- aa. Provide pre-pregnancy family planning services that are to be incorporated into the training, education, employment, and management program assessment effective June 30, 1998;
- bb. Seek federal funding to assist in the evaluation of the program;

- cc. Seek the approval of the secretary to develop and use a single application form for all economic assistance programs administered by the county social service boards;
- dd. After June 30, 1998, except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the month of the child's probable conception;
- ee. Disregard earned income as an incentive allowance for no more than twelve months; and
- ff. Except as otherwise may be permitted by federal law, not reduce or terminate benefits based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained six years of age and the individual proves a demonstrated inability to obtain needed child care because of the:
 - (1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
 - (2) Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
 - (3) Unavailability of appropriate and affordable formal child care arrangements.

SECTION 3. LEGISLATIVE INTENT - DEPARTMENT TO NEGOTIATE PILOT PROJECT - REPORTS TO LEGISLATIVE COUNCIL.

1. It is the legislative intent of the legislative assembly that the department of human services offer to negotiate with the tribal government of any Indian tribe in this state to establish a pilot project to begin operation no sooner than July 1, 2001, under which that tribal government will secure direct funding for the administration of a tribal family assistance grant under 42 U.S.C. 612 from the United States department of health and human services, and under which the state will participate, in cash or in kind, in the cost of providing services under the tribal family assistance grant, provided:
 - a. All components of the program are administered by the department of human services, one or more county social service boards, one or more contractors with the department of human services, or any combination thereof;
 - b. Interagency agreements entered into between the department of human services and other state or federal agencies, essential to the state's receipt of federal funds otherwise available under title IV-A, title IV-B, title IV-D, or title IV-E of the Social Security Act, will be honored by the tribe to the extent the department of human services requires the county social service boards to honor those agreements;
 - c. The annual funding contributed by the state may not exceed an amount calculated by dividing the nonfederal share of total state expenditures under title IV-A of the Social Security Act for the

twelve-month period beginning October 1, 1993, and ending September 30, 1994, by the monthly average number of title IV-A filing units receiving title IV-A benefits in the state during that period, and multiplying the result times the number of IV-A filing units on April 1, 1999, with a primary information person who:

- (1) Is an enrolled member of a tribe or is married to an enrolled member of a tribe who is also a member of that IV-A filing unit; and
 - (2) Lives in Indian country within a North Dakota county that also includes Indian reservation lands subject to the exclusive jurisdiction of the tribe;
- d. The state's financial participation in the pilot project will be terminated upon breach of the negotiated agreement.
2. The department of human services shall periodically report to the legislative council, or to an interim study committee designated by the legislative council, on the progress of any negotiation conducted under subsection 1.
 3. An interim committee designated by the legislative council to receive reports under subsection 2 shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

SECTION 4. LEGISLATIVE COUNCIL STUDY. During the 1999-2000 interim, the legislative council shall consider studying the implementation of temporary assistance to needy families program in North Dakota, the effectiveness of that program to accomplish welfare reform, and the need for continuing legislative monitoring. The study may address the proportion of adults living in Indian country who are employed and the efforts of the department of human services to negotiate a pilot project under which the state would participate in the cost of providing services under a tribal family assistance grant.

SECTION 5. REPORTS TO LEGISLATIVE COUNCIL - UNEMPLOYMENT IN INDIAN COUNTRY. The department of human services shall periodically report to the legislative council, or an interim study committee designated by the legislative council, on the progress in its efforts to determine the most reliable current data concerning the proportion of adults living in Indian country who are unemployed.

Approved April 19, 1999
Filed April 19, 1999

CHAPTER 422**HOUSE BILL NO. 1119**

(Human Services Committee)

(At the request of the Department of Human Services)

BIRTH REPORTS ELIMINATED

AN ACT to amend and reenact subsection 1 of section 50-06-01.2 of the North Dakota Century Code, relating to birth reports; and to repeal chapter 50-20 of the North Dakota Century Code, relating to reporting of out-of-wedlock births and births of children with visible congenital deformities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-06-01.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The social service board of North Dakota, including all of the statutory authority and responsibilities set out in chapters 27-21, 50-06, 50-06.1, 50-09, 50-10, 50-11, 50-11.1, 50-12, 50-18, 50-19, ~~50-20~~, 50-21, 50-24.1, and 50-25.1.

SECTION 2. REPEAL. Chapter 50-20 of the North Dakota Century Code is repealed.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 423

SENATE BILL NO. 2036

(Legislative Council)
(Budget Committee on Long-Term Care)

ASSISTED LIVING FACILITIES

AN ACT to amend and reenact sections 50-06-14.4 and 50-24.5-01 of the North Dakota Century Code, relating to assisted living facilities; to require the preparation of a recommendation by the department of human services and the state department of health; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁸ **SECTION 1. AMENDMENT.** Section 50-06-14.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-06-14.4. Alzheimer's and related dementia and twenty-four hour care projects. The department of ~~human services~~ shall establish projects designed to meet the service needs of the alzheimer's and related dementia population and other aged, blind, or disabled persons who require twenty-four hour care. The projects established under this section must explore the financial and service viability of converting existing nursing facility or basic care capacity to a specific twenty-four hour service environment that targets either the alzheimer's and related dementia population or other aged, blind, or disabled persons who require twenty-four hour care. Project costs must be met using amounts appropriated to the department. Approval preference must be given to projects that involve a reduction in nursing facility beds due to delicensing an entire nursing facility or basic care facility or wing of a nursing facility or basic care facility. The state department of health shall cooperate with the department to ensure the success of the projects. The projects may be established notwithstanding subsections ~~2, 5, 4, 9, and 10; and 44~~ and subdivision c of subsection ~~9 8~~ of section 50-24.5-01; ~~relating to definitions for aid to aged, blind, and disabled persons; and subsection 4 of section 23-09.3-01, relating to the definition of a basic care facility.~~

SECTION 2. AMENDMENT. Section 50-24.5-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a facility that:
 - a. Makes response staff available at all times;
 - b. Provides housing and:

²⁷⁸ Section 50-06-14.4 was repealed by section 1 of Senate Bill No. 2034, chapter 424.

- 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 January 1, 1995, 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~~ assisted living 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.
40. 9. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to ~~four~~ five or more persons who are not related to the proprietor.
44. 10. "Living independently" includes living in congregate housing. The term does not include living in an institution.
11. "Proprietor" means a person responsible for day-to-day administration and management of a facility.
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. "Related to the proprietor" means a person who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.
14. "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.
44. 15. "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.

SECTION 3. DEPARTMENT OF HUMAN SERVICES AND STATE DEPARTMENT OF HEALTH - RECOMMENDATION. The department of human services and the state department of health, after consultation with individuals and entities determined appropriate by those departments, shall prepare a recommendation for consideration by the fifty-seventh legislative assembly describing the conversion of current basic care and assisted living facilities into an integrated long-term housing and service system entitled assisted living. The recommendation must include appropriate methods and means for the inspection, regulation, and payment systems for assisted living facilities that respect residents' choices of care providers. That recommendation must include a proposed budget and any necessary implementing legislation and appropriation.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 2001.

SECTION 5. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2001, and after that date is ineffective.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 424**SENATE BILL NO. 2034**

(Legislative Council)
(Budget Committee on Long-Term Care)

ALZHEIMER'S AND DEMENTIA PROJECTS REPEAL

AN ACT to repeal section 50-06-14.4 of the North Dakota Century Code, relating to alzheimer's and related dementia projects; to require the department of human services to monitor the progress of the alzheimer's and related dementia projects and report to the legislative council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁹ **SECTION 1. REPEAL.** Section 50-06-14.4 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 2. DEPARTMENT OF HUMAN SERVICES TO MONITOR PROJECTS - REPORT TO LEGISLATIVE COUNCIL. The department of human services shall monitor the progress of the alzheimer's and related dementia projects established under section 50-06-14.4 and shall present a final progress report to the legislative council by June 30, 2000.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective July 1, 2001.

Approved March 3, 1999
Filed March 4, 1999

²⁷⁹ Section 50-06-14.4 was amended by section 1 of Senate Bill No. 2036, chapter 423.

CHAPTER 425

HOUSE BILL NO. 1401

(Representatives L. Thoreson, Haas, N. Johnson, Kroeber, Wikenheiser)

CHARITABLE SOLICITATIONS

AN ACT to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.2, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; to repeal section 50-22-03 of the North Dakota Century Code, relating to charitable solicitation license applications; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-22-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. a. "Charitable organization" means any ~~benevolent, philanthropic, patriotic, social, or eleemosynary organization, or one purporting to be this type of organization.~~ The term does not include entity that:
 - (1) Is deemed by the internal revenue service to be a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; or
 - (2) Holds itself out to the public to be established for any charitable purpose; or
 - (3) In any manner employs a charitable appeal as the basis for any solicitation.
- b. The term "charitable organization" does not include:
 - ~~a.~~ (1) An organization soliciting funds for an institution of higher learning.
 - ~~b.~~ (2) An organization using only volunteer unpaid fundraisers and soliciting funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.
 - ~~c.~~ (3) A private or public elementary or secondary school.
 - ~~d.~~ (4) A charitable organization or person soliciting contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.

- e. (5) A duly constituted religious organization or any group affiliated with and forming an integral part of that organization no part of the net income of which inures to the direct benefit of any individual and which has received a declaration of current tax exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain the declaration if the parent or principal organization has obtained the declaration.
- (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.
2. "Contribution" means cash or the promise of, grant, or pledge of any money, credit, assistance, or property of any kind or value provided in response to a solicitation. The term includes a promise or grant of money or property for which consideration in the form of a service or good is provided if the promise or grant may have been given as a result of a connection to a charitable organization. "Contribution" does not include bona fide fees, dues, or assessments paid by members of an organization, provided that:
- a. Membership is not conferred in exchange for a contribution in response to a solicitation; or
- b. Membership provides no benefit in addition to the right to vote or otherwise participate in the organization and the right to receive literature.
3. "Person" means any individual, organization, ~~group,~~ association, partnership, corporation, or limited liability company; ~~or any combination of them.~~
4. "Professional fundraiser" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fundraiser.
5. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through the person's agents, servants, or employees or through agents, servants, or employees specially employed by, or for, a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fundraiser within the meaning of this chapter. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent

establishment within the state may not be deemed to be a professional solicitor.

~~No~~ An attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization may not be deemed, as the result of ~~such~~ that advice, to be a professional fundraiser or a professional solicitor.

6. "Solicitation" means ~~the asking, seeking, appealing, requesting, directly or indirectly by means of mail, personal contact, written material, radio, television, news media, magazines or other periodicals, or any other means of communication, of money or property of any kind or value or pledges for the same~~ request to the public or member of the public for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including:
- a. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media;
 - b. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through any medium available to the public and described in subdivision a;
 - c. A sale of or attempt to sell any good or service in which the good or service is priced above fair market value or when it is otherwise represented that some portion of the purchase price will be used for a charitable purpose; or
 - d. An announcement inviting the public to attend an assembly, event, exhibition, performance, or social gathering of any kind where admission is conditioned on the receipt of a contribution or at which function contributions will be otherwise solicited.

A solicitation is deemed to have occurred regardless of whether the party solicited makes a contribution.

SECTION 2. AMENDMENT. Section 50-22-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02. License to solicit - Term - Revocation. A charitable organization may not solicit contributions from persons in this state by any means without first having obtained a license from the secretary of state. The application for a license must contain the information concerning the solicitation as required by this chapter. This information must be filed with the secretary of state and must be available as a matter of public record. The application form containing the information must be sworn to and must include the following:

1. The name of the charitable organization for which the solicitation is to be conducted.
2. The organization's address.
3. The purpose or purposes for which the contributions solicited are to be used.

4. The individual or officer who will have custody of the contributions.
5. The individual or officer responsible for the distribution of contributions received.
6. The period of time during which solicitation is to be conducted.
7. A description of the methods of solicitation in such detail as may be determined by the secretary of state.
8. Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or both, and if in whole or part by paid solicitors, the name and address of each professional fundraiser supplying the solicitors, the basis of payment, and the nature of the agreement.
9. Any additional information deemed necessary by the secretary of state.

The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until the ~~first day of~~ September first of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the state general fund of the state. The fee for an initial license is twenty-five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause. ~~The fee for a subsequent license is ten dollars.~~

SECTION 3. AMENDMENT. Section 50-22-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-02.1. Registration of professional fundraiser; ~~professional and solicitor; and charitable organizations.~~ The secretary of state or the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds ~~and each renewal application of charitable organizations for the right to solicit funds.~~ A person may not act as a professional fundraiser or solicitor subject to this chapter unless that person has registered with the secretary of state. The application for registration must be accompanied by an annual fee of one hundred dollars. This information must be available to the public as a matter of public record. The forms containing the information must be sworn to and must include the following:

1. The name of the professional fundraiser or solicitor.
2. The address of the professional fundraiser or solicitor.
3. The type of fundraising to be conducted in this state.

4. The name of the auditor in charge of the organization's records.
5. A list of all officers, agents, or employees to work under the applicant's direction.
6. A list of all licensed charitable organizations with which the applicant has contracts within this state.

If the solicitation is to be made in whole or in part by a professional fundraiser or ~~professional~~ solicitor, the secretary of state shall approve registration if the arrangement for payment conforms to the requirements of this chapter and all relevant rules. The registration of a professional fundraiser grants the right to solicit funds within the state for charitable organizations until ~~the first day of~~ first of that year. Any applicant who is denied registration may, within fifteen days from the date of notification of denial, request in writing a hearing before the secretary of state. The hearing must be held within fifteen days from the date of the request.

No person may act as a professional fundraiser or ~~professional~~ solicitor for a charitable organization subject to this chapter unless that person first has registered with the secretary of state. An application for registration must be in writing, under oath or affirmation in the form prescribed by the secretary of state, and must contain any information the secretary of state may require. The application for registration by a professional fundraiser or ~~professional~~ solicitor must be accompanied by an annual fee in the sum of one hundred dollars. A partnership, corporation, or limited liability company that is a professional fundraiser or ~~professional~~ solicitor may register for and pay a single fee on behalf of all its members, officers, agents, and employees. However, the names and addresses of all officers, agents, and employees employed to work under the direction of a professional solicitor or fundraiser must be listed in the application.

A parent organization filing on behalf of one or more chapters, branches, or affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and the chapters, branches, affiliates, or member agencies included in the registration statement. If any charitable organization, professional fundraiser, or ~~professional~~ solicitor fails to file any registration application or other information required to be filed by the secretary of state under this chapter or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last known address, may deny or suspend the application for registration if the information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice. All civil proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided. Any notice required under this chapter or chapter 28-32 may be made by certified mail.

SECTION 4. AMENDMENT. Section 50-22-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-04. Information required to be filed annually. Every charitable organization licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, shall file an annual report along with a ten dollar fee with the secretary of state on or before ~~the first day of~~ first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used. The annual report must be filed on forms provided by the secretary of state containing the following information:

1. ~~The gross amount of the contributions pledged or collected in this state~~ Specific and itemized support and revenue statements disclosing direct public support in this state from solicitation, indirect public support, government grants, program service revenue, and any other revenue.
2. The amount thereof given ~~or to be given~~ to the charitable purpose represented.
3. ~~The aggregate amount paid or received and to be paid or received for the expenses of solicitation~~ Specific and itemized expense statements disclosing program services, public information expenditures, payments to affiliates, management costs, and salaries paid in this state.
4. The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.

In addition, the secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall assist the secretary of state in carrying out this chapter and, for this purpose, has all powers granted by this chapter to the secretary of state. Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter.

Failure to file the annual report and fee as required will mean the organization's registration will no longer be in effect and the organization may not solicit in this state.

SECTION 5. AMENDMENT. Section 50-22-04.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-04.2. Contract or statement filing. Every contract, written agreement, or written statement of the nature of the arrangement to prevail in the absence of a contract between a professional fundraiser or ~~professional~~ solicitor and a charitable organization must be filed by the professional fundraiser and the charitable organization with the secretary of state within ten days after such contract, written agreement, or written statement is concluded.

SECTION 6. AMENDMENT. Section 50-22-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-22-05. Enforcement - Penalties. Any person conducting a solicitation in violation of this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. ~~A fundraiser~~ Any person

who commences or continues fundraising or soliciting after the fundraiser's person's application is denied or the license or registration under this chapter is revoked or ~~or canceled~~ or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the ~~fundraiser~~ person the right to engage in future fundraising activities.

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the fundraiser, charitable organization, or professional solicitor is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser or ~~professional~~ solicitor, or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser or ~~professional~~ solicitor or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other relief the court determines appropriate including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of licensure or registration under this chapter for a period of up to five years.

SECTION 7. REPEAL. Section 50-22-03 of the North Dakota Century Code is repealed.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 426**HOUSE BILL NO. 1384**
(Representatives Poolman, Delmore)**MEDICAID RECIPIENT FUNERAL EXPENSES**

AN ACT to amend and reenact section 50-24.1-02.3 of the North Dakota Century Code, relating to funeral expenses in claims against the estates of former medicaid recipients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.3. When designated pre-need funeral service contracts, prepayments, or deposits not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any pre-need funeral service contracts, prepayments, or deposits to a fund which total three thousand dollars or less designated by the applicant or recipient as set aside to pay for the applicant's or recipient's funeral. In addition, the applicant or recipient may designate all or a portion of the three thousand dollar asset limitation for funeral ~~purposes~~ pre-need contracts, prepayments, or deposits. Interest or earnings retained in a funeral fund also may not be considered as an available resource. A pre-need funeral service contract, prepayment, or deposit designated under this section is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that funds maintained in accordance with this section total less than three thousand dollars.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 427

HOUSE BILL NO. 1038

(Legislative Council)

(Insurance and Health Care Committee)

PREHOSPITAL EMERGENCY MEDICAL SERVICE ASSISTANCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance coverage of prehospital emergency medical services; to amend and reenact section 23-27-04.2 of the North Dakota Century Code, relating to state assistance to prehospital emergency medical services; and to provide legislative intent regarding state department of health assistance for prehospital emergency medical services and department of human services medical assistance reimbursement rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.2. Prehospital emergency medical services - State assistance. The ~~health services branch~~ of the state department of health shall assist in the training of personnel of certain prehospital emergency medical services as determined by the ~~branch department~~ and financially shall assist certain prehospital emergency medical services as determined by the ~~branch department~~ in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The ~~health services branch department~~ shall adopt criteria for eligibility for assistance in the training of personnel of various types of prehospital emergency medical services. To qualify for financial assistance for equipment, a prehospital emergency medical service shall certify, in the manner required by the ~~health services branch department~~, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The ~~health services branch department~~ shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The ~~health services branch department~~ may establish minimum and maximum amounts of financial assistance to be provided a prehospital emergency medical service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the ~~health services branch department~~ may prorate the funds among the applicants in accordance with criteria adopted by the ~~health services branch department~~. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Prehospital emergency medical services. Medical assistance coverage must include prehospital emergency medical services benefits in the case of a medical condition that manifests itself by symptoms of sufficient severity which may include severe pain and which a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of medical attention to result in placing the person's health in jeopardy, serious impairment of a bodily function, or serious dysfunction of any body part.

SECTION 3. INTENT. The funds appropriated for the purpose of defraying expenses of prehospital emergency medical services under sections 1 and 2 of this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001 include \$940,000 appropriated from the general fund in 1999 House Bill No. 1004 for training for volunteers. The funds provided for training are for volunteer services based on \$2,200 for volunteer ambulance service training, \$500 for volunteer rescue squad training, \$500 for the initial training of volunteer emergency medical service providers, and \$1,500 for training of volunteer quick response units, subject to reallocation by the state department of health based on training applications and available funding. The state department of health may accept funds from other sources and may distribute these funds to prehospital emergency medical services providers for the purpose of obtaining equipment.

SECTION 4. MEDICAL ASSISTANCE - REIMBURSEMENT FOR AMBULANCE SERVICES. During the biennium beginning July 1, 1999, and ending June 30, 2001, the department of human services shall spend \$276,000 in addition to the \$943,068 in the executive budget recommendation for medical assistance reimbursement for ambulance services. If the amount of ambulance services billing is less than the amount required to be spent under this section, the department of human services shall reimburse ambulance services at one hundred percent of billing for ambulance services and the department shall use the remainder for medical assistance reimbursement for other medical services.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 428

SENATE BILL NO. 2033

(Legislative Council)
(Budget Committee on Long-Term Care)

NURSING HOME PROHIBITED PRACTICES AND RATES

AN ACT to create and enact a new subsection to section 50-24.4-19 of the North Dakota Century Code, relating to prohibited practices of nursing homes; to amend and reenact section 50-24.4-01 of the North Dakota Century Code, relating to nursing facility rates; to repeal section 50-06-14.3 of the North Dakota Century Code, relating to basic care rates; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.4-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

50-24.4-01. Definitions. For the purposes of this chapter:

1. "Actual allowable historical operating cost per diem" means the per diem operating costs allowed by the department for the most recent reporting year.
2. "Actual resident day" means a billable, countable day as defined by the department.
3. "Department" means the department of human services.
4. "Depreciable equipment" means the standard movable resident care equipment and support service equipment generally used in long-term care facilities.
5. "Direct care costs" means the cost category for allowable nursing and therapy costs.
6. "Final rate" means the rate established after any adjustment by the department, including, ~~but not limited to,~~ adjustments resulting from cost report reviews and audits.
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.
8. "General and administrative costs" means all allowable costs for administering the facility, including, ~~but not limited to,~~ salaries of administrators, assistant administrators, accounting personnel, data processing personnel, security personnel, and all clerical personnel; board of directors' fees; business office functions and supplies; travel,

except as necessary for training programs for dietitians, nursing personnel and direct resident care related personnel required to maintain licensure, certification, or professional standards requirements; telephone and telegraph; advertising; membership dues and subscriptions; postage; insurance, except as included as a fringe benefit ~~under subsection 6~~; professional services such as legal, accounting, and data processing services; central or home office costs; management fees; management consultants; employee training, for any top management personnel and for other than direct resident care related personnel; and business meetings and seminars.

9. "Historical operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective, after the department has reviewed those costs and determined them to be allowable costs under the medical assistance program, and after the department has applied appropriate limitations such as the limit on administrative costs.
10. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.
11. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].
12. "Nursing home" means a facility, not owned or administered by the state government, ~~described~~ defined 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.
- ~~42.~~ 13. "Operating costs" means the day-to-day costs of operating the facility in compliance with licensure and certification standards.
- ~~43.~~ 14. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.
- ~~44.~~ 15. "Payment rate" means the rate determined under section 50-24.4-06.
- ~~45.~~ 16. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.
- ~~46.~~ 17. "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 governmental entity with ratesetting authority, including the veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services for the resident.
- ~~47.~~ 18. "Rate year" means the fiscal year for which a payment rate determined under this chapter is effective, from January first to the next December thirty-first.

48. 19. "Real estate" means improvements to real property and attached fixtures used directly for resident care.
49. 20. "Reporting year" means the period from July first to June thirtieth, immediately preceding the rate year, for which the nursing home submits reports required under this chapter.
20. 21. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, nursing home administrators, and ~~any other person~~ persons performing functions ordinarily performed by such personnel.

SECTION 2. A new subsection to section 50-24.4-19 of the North Dakota Century Code is created and enacted as follows:

Charging a managed care organization a rate that is less than the rate approved by the department for a medical assistance recipient in the same classification.

SECTION 3. REPEAL. Section 50-06-14.3 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 4. EMERGENCY - EFFECTIVE DATE. Section 3 of this Act is declared to be an emergency measure and is effective July 1, 1999.

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 429

SENATE BILL NO. 2168

(Human Services Committee)

(At the request of the Department of Human Services)

HEALTH CARE TRUST FUND

AN ACT to create and enact a new chapter to title 6, a new section to chapter 50-24.4, and a new chapter to title 50 of the North Dakota Century Code, relating to a funding pool to establish the North Dakota health care trust fund to make grants and loans to support development of basic care facilities, assisted living facilities, and other alternatives to nursing facility care; to repeal chapter 50-21 of the North Dakota Century Code, relating to the administration of a revolving fund for nursing homes and homes for aged; to provide continuing appropriations to make funding pool payments and disbursements from the North Dakota health care trust fund; to declare a retroactive application; 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. A new chapter to title 6 of the North Dakota Century Code is created and enacted as follows:

Definitions. Terms defined in section 3 of this Act have the same meaning when used in this chapter.

Revolving loan fund - Appropriation. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to nursing facilities, basic care facilities, assisted living facilities, or other entities providing alternatives to nursing facility care, to encourage and support conversion of nursing facilities. All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative loan fund.

1. There is hereby created a nursing facility alternative loan fund. The fund shall include revenue transferred from the North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.
2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:
 - a. Loans as provided in this chapter and as approved by the department under section 3 of this Act;
 - b. The costs of administration of the fund; and
 - c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.

3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Loan application - How made. All applications for loans under this chapter must be made to the department. The department may approve the applications of qualified applicants who propose projects that conform to requirements established under section 3 of this Act. Applications approved by the department must be forwarded to the Bank of North Dakota. Upon approval of the application by the Bank of North Dakota, loans may be made from the revolving loan fund in accordance with the provisions of this chapter.

Amount of loans - Terms and conditions. Loans in an amount not exceeding eighty percent of project costs may be made by the Bank of North Dakota from the fund maintained pursuant to this chapter. Such loans must bear interest at a rate determined by the Bank of North Dakota to be two percentage points less than the market rate for similar commercial loans, provided that no loan may bear interest at a rate less than one half of one percent, or more than seven percent, of the outstanding principal balance of the loan. In consideration of the making of a loan under this chapter, each borrower shall execute a contract with the department to operate the project in accordance with standards established under section 3 of this Act. The contract must also provide that if the use of the project is discontinued or diverted to purposes other than those provided in the loan application without written consent of the department, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under this chapter, one half of one percent of the principal balance of the outstanding loans from the revolving fund.

Powers of Bank of North Dakota. The Bank of North Dakota may do all acts or things necessary to negotiate loans and preserve security under this chapter, including the power to take such security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the revolving fund under mortgages, contracts, and notes executed to obtain loans under the provisions of this chapter. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the Bank of North Dakota may take a subordinate security interest. The bank may recover from the revolving loan fund amounts actually expended by it for legal fees and to effect a redemption.

SECTION 2. A new section to chapter 50-24.4 of the North Dakota Century Code is created and enacted as follows:

Government nursing facility funding pool - Appropriations.

1. For purposes of this section:
 - a. "Fiscal period" means a twelve-month period determined by the department; and
 - b. "Governmental nursing facility" means any nursing home administered by any political subdivision of this state for which a rate is set under this chapter.
2. The department shall establish a pool consisting of an amount annually calculated by multiplying the total of all resident days of all nursing homes during the fiscal period during which a resident was eligible for

and received benefits under chapter 50-24.1 times an amount that does not exceed the amount that can reasonably be estimated to be paid under payment principles established under title XVIII of the Social Security Act [42 U.S.C. 1395, et seq.], reduced by the payment rates set for each such resident, for each such day, during the fiscal period.

3. In addition to any payment made pursuant to a rate set under this chapter, and notwithstanding any other provision of this chapter, the department shall pay to each governmental nursing facility an amount determined by:
 - a. Dividing that facility's total inpatient days for the fiscal period by the total inpatient days of all governmental nursing facilities for the fiscal period; and
 - b. Multiplying a decimal fraction determined under subdivision a times the pool amount determined under subsection 2.
4. Each governmental nursing facility, immediately upon receiving a payment under subsection 3, shall remit the amount of that payment, less a ten thousand dollar transaction fee, to the state treasurer for credit to:
 - a. The North Dakota health care trust fund in an amount equal to the federal medical assistance percentage for the fiscal period times the total remittance to the state treasurer, less ten thousand dollars; and
 - b. The general fund for all remaining amounts.
5. Notwithstanding any other provision of this code, or of any ordinance or code governing the operation of a governmental nursing facility, a governmental nursing facility is authorized to receive and, upon receipt, required to remit payments provided under this section.
6. No payment is required under this section for any period in which the funds otherwise appropriated under subdivision b of subsection 7 are unavailable due to action by the secretary of the United States department of health and human services.
7. The department of human services, subject to legislative appropriation, may make the payments described in subsection 3 for the pool amount annually determined under subsection 2, as follows:
 - a. From special funds derived from federal funds and other income, the pool amount determined under subsection 2 reduced by the amount determined under subdivision b; and
 - b. From the general fund, the "state percentage" as that term is used in defining the term "federal medical assistance percentage" for purposes of title XIX of the Social Security Act [42 U.S.C. 1396, et seq.], multiplied times the pool amount determined under subsection 2.

SECTION 3. A new chapter to title 50 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter:

1. "Alternative to nursing facility care" means services described in the home and community-based services waiver for aged persons under medical assistance.
2. "Assisted living facility" has the meaning provided in section 50-24.5-01, but if the term is not defined in that section, the term means a facility that:
 - a. Makes response staff available at all times;
 - b. Provides housing and:
 - (1) Congregate meals;
 - (2) Kitchen facilities in each resident's living quarters; or
 - (3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;
 - c. Assures provision of:
 - (1) Personal care, therapeutic care, and social and recreational programming;
 - (2) Supervision, safety, and security;
 - (3) Medication services; and
 - (4) Transportation services;
 - d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and
 - e. Services five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.
3. "Basic care facility" has the meaning provided in section 23-09.3-01.
4. "Conversion" means:
 - a. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate basic care facility services, assisted living facility services, or other alternatives to nursing facility care; or
 - b. New construction of a basic care facility, assisted living facility, or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new

construction is more cost effective than the conversion of existing space.

5. "Department" means the department of human services.
6. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396, et seq.] and chapter 50-24.1.
7. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the term "nursing home".

North Dakota health care trust fund created - Appropriation. There is hereby created in the state treasury a special fund known as the North Dakota health care trust fund. The fund shall include revenue received from governmental nursing facilities for remittance to the fund under section 2 of this Act. The department shall administer the fund and shall adopt procedures for participation by governmental nursing facilities. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the North Dakota health care trust fund. The state treasurer shall invest such funds in interest-bearing accounts, as designated by the department, and the interest earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department, subject to legislative appropriation, for disbursement pursuant to the requirements of this chapter.

Nursing facility alternative grant fund.

1. There is hereby created a nursing facility alternative grant fund. The fund shall include revenue transferred from the North Dakota health care trust fund.
2. The department shall administer the distribution of funds in the nursing facility alternative grant fund. The nursing facility alternative grant fund may be used for:
 - a. Grants, as provided in this chapter;
 - b. The costs of administration of the grants; and
 - c. Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 2 of this Act.
3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

Department to award grants or make loan guarantees.

1. The department may award grants from the nursing facility alternative grant fund or approve loans from the nursing facility alternative loan fund established under section 1 of this Act for capital or one-time expenditures, including startup and training expenses and operating losses for the first year:
 - a. To any nursing facility which has been approved for at least three years as a provider under the medical assistance program to convert all or a portion of the facility licensed to provide such care

- to a basic care facility, assisted living facility, or other alternative to nursing facility care; or
- b. To any other entity meeting conditions established by the department to develop a basic care facility, assisted living facility, or other alternative to nursing facility care.
2. A nursing facility or other entity may be eligible for a grant or loan only if the basic care facility, assisted living facility, or other alternative to nursing facility care is located in an underserved area as determined by the department.
 3. To be eligible for a grant or loan under this section, the nursing facility or other entity approved by the department shall provide at least twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. The department's share of the total cost of any conversion is limited to one million dollars or eighty percent of the project cost, whichever is less.
 4. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or approving loans.
 5. No grant or loan application may be approved by the department unless the applicant can demonstrate that:
 - a. Conversion of the nursing facility or portion of the facility to a basic care facility, assisted living facility, or other alternative to nursing facility care may offer efficient and economical care to individuals requiring long-term care services in the area;
 - b. Basic care, assisted living services, or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program; and
 - c. The resulting reduction in the availability of nursing facility service is not expected to cause undue hardship on those individuals requiring nursing facility services.
 6. No grant may be awarded or loan approved unless the applicant agrees:
 - a. To maintain a minimum occupancy rate by individuals eligible for supplemental security income benefits provided under title XVI of the Social Security Act [42 U.S.C. 1382, et seq.]; and
 - b. To refund to the nursing facility alternative grant fund or the nursing facility alternative loan fund, on an amortized basis, the amount of the grant or loan if the applicant or its successor in interest ceases to operate a basic care facility, assisted living facility, or other alternative to nursing facility care during the ten-year period after the date the applicant began operation of its facility as a basic care facility, assisted living facility, or other alternative to nursing facility care ceases to maintain the agreed minimum occupancy rate or fails to commence operations within a reasonable time.

7. In addition to other remedies provided by law or contract, the department may deduct the amount of any refund due from a recipient of grant or loan guarantee funds from any money owed by the department to such recipient or the recipient's successor in interest.

Department to adopt rules.

1. The department shall adopt rules that establish:
 - a. An application process for grants or loans;
 - b. Criteria, that need not be the same for grants as for loans, for nursing facilities and other entities to receive funding, including minimum occupancy rates, allowable costs, and refund methods;
 - c. Criteria for the rates and amounts of funding; and
 - d. Other procedures as the department deems necessary for the proper administration of this chapter.
2. Rules adopted under this chapter may be adopted as interim final rules without a finding that emergency rulemaking is necessary, and any interim final rules so adopted may take effect on a date no earlier than the date of first filing with the legislative council of the notice of proposed adoption of a rule.

Chapter does not create entitlement. This chapter does not create an entitlement to any funds available for grants or loans. The department may award grants or approve loans to the extent funds are available and, within its discretion, to the extent such applications are approved.

Annual cost reports. Recipients of grants and loans under this chapter shall annually submit cost reports to the department regarding the conversion project for a period of ten years after the date the recipient began operation of its facility as a basic care facility, an assisted living facility, or other alternative to nursing facility care. The department shall develop the cost report which must include revenue, costs, loans undertaken by the facility, fixed assets of the facility, a balance sheet, and a profit and loss statement.

Annual reports by the department. The department shall provide reports to the governor and the legislative council on or before August thirty-first of each year after the effective date of this Act, concerning grants awarded or loans approved under this chapter through June thirtieth of that year. Each report must include the number of applicants and approved applicants, an overview of the grants awarded or loans approved, and reports of the cost of each project funded by a grant or loan and annual cost reports received from recipients of grants or loans under this chapter.

SECTION 4. APPROPRIATION - GOVERNMENT NURSING FACILITY FUNDING POOL. There is hereby appropriated a total of \$12,409,448, of which \$3,618,391 is from the general fund, to the department of human services for the purpose of making the payments pursuant to section 2 of this Act and including \$226,238 for department administrative costs for the biennium beginning July 1, 1999, and ending June 30, 2001. In the event that additional amounts in excess of \$12,409,448 become available during the biennium based on the calculation in section 2 of this Act, the department of human services may

increase the amount paid which funds are hereby appropriated, subject to emergency commission and budget section approval, and providing that any additional "state percentage" required be made available from a loan from the Bank of North Dakota which funds are hereby appropriated.

SECTION 5. APPROPRIATION - HEALTH CARE TRUST FUND.

There is hereby appropriated a total of \$8,715,279, including an estimated \$190,460 of fund interest earnings from special funds derived from amounts available in the North Dakota health care trust fund to the department of human services for the purpose of the implementation of this Act for the biennium beginning July 1, 1999, and ending June 30, 2001. Of the first \$8,524,820 deposited in the health care trust fund, \$4,262,410 must be allocated by the department of human services for loans and grants pursuant to section 3 of this Act and \$4,262,410 must be available for funding the service payments to the elderly and disabled program to be appropriated in Senate Bill No. 2012. If additional amounts in excess of \$8,715,279 become available during the biennium based on the calculation of section 2 of this Act, the department of human services may increase the amount paid and the funds are hereby appropriated, subject to emergency commission and budget section approval.

SECTION 6. LEGISLATIVE INTENT - ADMINISTRATIVE STAFF.

It is the intent of the legislative assembly that two full-time equivalent administrative staff positions shall be added to the positions authorized by the fifty-sixth legislative assembly for the department of human services for the biennium beginning July 1, 1999, and ending June 30, 2001, for carrying out the purposes of this Act. The continuation of these positions, if required, must be requested of the fifty-seventh legislative assembly.

SECTION 7. REPEAL. Chapter 50-21 of the North Dakota Century Code is repealed.

SECTION 8. RETROACTIVE APPLICATION OF ACT. This Act is retroactive in application.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 2001, and after that date is ineffective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 1999
Filed April 19, 1999

SALES AND EXCHANGES

CHAPTER 430

HOUSE BILL NO. 1153

(Finance and Taxation Committee)
(At the request of the Attorney General)

TOBACCO RESERVE FUND

AN ACT to establish a reserve fund to assure a source of compensation for the consequences of the sale of cigarettes within the state; to provide an effective date; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions.

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit C to the master settlement agreement.
2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.
3. "Allocable share" means allocable share as that term is defined in the master settlement agreement.
4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
 - a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
 - b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or
 - c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision a.

The term "cigarette" includes "roll-your-own", which means any tobacco that, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette", 0.09 ounces [2.556 grams] of "roll-your-own" tobacco constitutes one individual "cigarette".

5. "Master settlement agreement" means the settlement agreement and related documents entered on November 23, 1998, by the state and leading United States tobacco product manufacturers.
6. "Qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where the arrangement requires that the financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision b of subsection 2 of section 2 of this Act.
7. "Released claims" means released claims as that term is defined in the master settlement agreement.
8. "Releasing parties" means releasing parties as that term is defined in the master settlement agreement.
9. "Tobacco product manufacturer" means an entity that after the effective date of this Act directly, and not exclusively through any affiliate:
 - a. Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer, as that term is defined in the master settlement agreement, which will be responsible for the payments under the master settlement agreement with respect to cigarettes as a result of the provisions of subsection ll(mm) of the master settlement agreement and which pays the taxes specified in subsection ll(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise the cigarettes in the United States);
 - b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere which the manufacturer does not intend to be sold in the United States; or
 - c. Becomes a successor of an entity described in subdivision a or b.

The term "tobacco product manufacturer" does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within subdivision a, b, or c.

10. "Units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the

state on packs or "roll-your-own" tobacco containers. The state tax commissioner shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

SECTION 2. Requirements. A tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after the effective date of this Act, must do one of the following:

1. Become a participating manufacturer, as that term is defined in section II(jj) of the master settlement agreement, and generally perform its financial obligations under the master settlement agreement; or
2. a. Place into a qualified escrow fund by April fifteenth of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:
 - (1) 1999: \$.0094241 per unit sold after the effective date of this Act;
 - (2) 2000: \$.0104712 per unit sold;
 - (3) For each of 2001 and 2002: \$.0136125 per unit sold;
 - (4) For each of 2003 through 2006: \$.0167539 per unit sold; and
 - (5) For each of 2007 and each year thereafter: \$.0188482 per unit sold.
- b. A tobacco product manufacturer that places funds into escrow pursuant to subdivision a shall receive the interest or other appreciation on the funds as earned. The funds may be released from escrow only under the following circumstances:
 - (1) To pay a judgment or settlement on any released claim brought against the tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds must be released from escrow under this paragraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under the judgment or settlement;
 - (2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the state's allocable share of the total payments that the manufacturer would have been required to make in that year under the master settlement agreement (as determined pursuant to section IX(i)(2) of the master settlement agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that agreement other than the inflation adjustment) had it been a participating manufacturer, the excess must be released from escrow and revert back to the tobacco product manufacturer; or

- (3) To the extent not released from escrow under paragraph 1 or 2, funds must be released from escrow and revert back to the tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.
- c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the state tax commissioner that it is in compliance with this subsection. The state tax commissioner shall refer every instance of noncompliance to the attorney general. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section must:
- (1) Be required within fifteen days to place the funds into escrow as will bring it into compliance with this section. The court, upon a finding of a violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;
 - (2) In the case of a knowing violation, be required within fifteen days to place the funds into escrow as will bring it into compliance with this section. The court, upon a finding of a knowing violation of this subdivision, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow; and
 - (3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section constitutes a separate violation.

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

Approved April 7, 1999
Filed April 8, 1999

SOCIAL SECURITY

CHAPTER 431

HOUSE BILL NO. 1093

(Political Subdivisions Committee)

(At the request of Job Service North Dakota)

JOB SERVICE PROPERTY SALE

AN ACT authorizing the state of North Dakota acting through job service North Dakota to sell or transfer certain property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Sale of property by job service North Dakota. The state of North Dakota acting through job service North Dakota may sell and convey lots 1, 2, 3, 4, and 5, block 60, original plat, city of Bismarck, 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. Net proceeds from the sale must be used as authorized and directed by law.

SECTION 2. Transfer of title to property by job service North Dakota. The state of North Dakota acting through job service North Dakota may transfer title and convey lots 1, 2, 3, 4, and 5, block 60, original plat, city of Bismarck, to the United States department of labor. This title transfer and conveyance may be made in the manner prescribed by section 54-01-05.1. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to this title transfer and conveyance.

SECTION 3. LEGISLATIVE INTENT. If the United States department of labor allows job service North Dakota to receive proceeds from the conveyance of lots 1, 2, 3, 4, and 5, block 60, original plat, city of Bismarck, North Dakota, it is the intent of the fifty-sixth legislative assembly that the fifty-seventh legislative assembly appropriate the net proceeds to job service North Dakota to invest in a replacement facility. If job service North Dakota does not convey the property, it is the intent of the fifty-sixth legislative assembly that job service North Dakota take appropriate actions to preserve the equity in this property until the fifty-seventh legislative assembly convenes and considers disposition of this property.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 432**SENATE BILL NO. 2150**

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

**ELECTION WORKER UNEMPLOYMENT
COMPENSATION EXEMPTION**

AN ACT to create and enact a new paragraph to subdivision h of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to exempting services performed by certain election workers for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new paragraph to subdivision h of subsection 17 of section 52-01-01 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than one thousand dollars.

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 433

HOUSE BILL NO. 1089

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB SERVICE AUDIT AND ADMINISTRATION

AN ACT to amend and reenact section 52-02-18 and subsection 3 of section 52-03-07 of the North Dakota Century Code, relating to an audit of job service North Dakota and the administration of unemployment compensation programs; to provide for an audit of job service North Dakota; to provide an appropriation; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-02-18. Independent audit - Continuing appropriation. The state auditor shall cause a performance audit of job service North Dakota to be conducted. The state auditor shall may appoint on a biennial basis an independent audit firm, with extensive expertise in job service practices and standards, to complete a performance audit of the divisions of job service North Dakota or the state auditor may conduct the performance audit. If the state auditor completes the audit, the state auditor may contract with a consulting firm to aid in the state audit or to complete the audit and shall charge job service North Dakota for the audit, including the services of the consulting firm. The audit must evaluate divisions of job service North Dakota, as determined necessary by the state auditor, to determine whether the divisions are providing quality service in an efficient and cost-effective manner. The audit report must contain recommendations for divisional improvement or an explanation of why no recommendations are being made. The executive director of job service North Dakota and the auditor shall present the audit report and any action taken as a result of the audit to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative assembly following the audit. The executive director shall also provide a copy of the audit report to the state auditor.

SECTION 2. AMENDMENT. Subsection 3 of section 52-03-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Money credited to the account of this state pursuant to section 903 of the Social Security Act [42 U.S.C. 1103], as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of sections 52-02-09, 52-03-01, 52-03-04, 52-03-07, and 52-03-08 and of public employment offices pursuant to this section. Notwithstanding this subsection, moneys credited with respect to federal fiscal years 2000, 2001, and 2002 must be used solely for the administration of the unemployment compensation program and the moneys are not otherwise subject to the requirements of subsection 1 when appropriated by the legislative assembly. Moneys

are hereby appropriated for the federal fiscal years identified in this subsection for purposes of administration of the unemployment compensation program.

SECTION 3. INDEPENDENT AUDIT DURING 1999-2001 BIENNIUM.

The 1999-2001 biennium independent audit of job service North Dakota required under section 52-02-18 must include:

1. An audit of the unemployment insurance trust fund;
2. A review of the strategic business plan for job service North Dakota;
3. A review of the information technology plan of job service North Dakota which includes:
 - a. Evaluating the telephone registration system, including claimant profiling and claimant consultation;
 - b. Evaluating financial reporting; and
 - c. Evaluating the effect technology may have on future staffing needs;
4. An audit of the average duration of benefits which includes:
 - a. Considering the effect of job service North Dakota policies, procedures, and services on duration of benefits; and
 - b. Evaluating claimant profiling, repeat claimants, job attachment status, and the job bank;
5. An audit of the work force 2000 program; and
6. An audit of the staffing needs of job service North Dakota.

SECTION 4. APPROPRIATION. The unemployment compensation incentive fund is established from all moneys credited to this state under section 2 of this Act for federal fiscal years 2000, 2001, and 2002. The amount of \$327,000 from this unemployment compensation incentive fund, to the extent funds are available in this fund, is hereby appropriated to job service North Dakota every year in which job service North Dakota achieves an average duration of benefits that is at least one-half week less than the average duration of benefits for the preceding program year, excluding every claimant who is on temporary layoff and returning to employment with the former employer within four weeks and excluding every claimant with demonstrated job attachment and a reasonable expectation of returning to a former base period employer once work becomes available for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 5. EXPIRATION DATE. Section 3 of this Act is effective through April 30, 2001, and after that date is ineffective.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 434

SENATE BILL NO. 2096

(Senator Grindberg)

(At the request of Job Service North Dakota)

NEW JOBS TRAINING COST REIMBURSEMENT

AN ACT to create and enact a new section to chapter 52-02.1 of the North Dakota Century Code, relating to cost reimbursement for new jobs training; and to amend and reenact subsection 2 of section 52-02.1-03 of the North Dakota Century Code, relating to cost reimbursement for new jobs training.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-02.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 52-02.1-04, or for reimbursing employers participating in the cost reimbursement option provided in section 2 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 or the employer's self-financed training costs have been reimbursed, 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.

SECTION 2. A new section to chapter 52-02.1 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Cost reimbursement option. Program services developed and coordinated by job service North Dakota provided to primary sector businesses found eligible for loans or grants under section 52-02.1-02 must also be provided to primary sector businesses that provide self financing as funding for new jobs training programs. Under this option, employers may be reimbursed an amount up to sixty percent of the allowable state income tax withholding generated from the new jobs positions and identified in the final agreement. Reimbursement under this option is to be made over the ten-year period of the project. The agreement requirements set forth in section 52-02.1-02 and the provisions of section 52-02.1-03 apply to this section.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 435

HOUSE BILL NO. 1135

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION RESERVES, RATES, AND BENEFITS

AN ACT to amend and reenact sections 52-04-05, 52-04-06, 52-04-09, and 52-06-05 of the North Dakota Century Code, relating to the required level of the unemployment compensation trust fund reserve, employer contribution rates, and maximum potential benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-04-05. (Effective through December 31, ~~2000~~ 1999) Determination of rates.

1. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, is equal to twenty-five percent of the average annual amount of benefits paid. On each October first after October 1, 1989, the amount of the trust fund reserve must be sixty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. On January 1, 2000, the required amount of the trust fund reserve becomes a targeted amount as determined under this subsection. The solvency target is an average high cost multiple of one. The average high cost multiple is the number of years the bureau could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended, [26 U.S.C. 3309]. The trust fund reserve target will be achieved over a seven-year period from January 1, 2000. Progress toward achieving the targeted amount of the trust fund reserve is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the

trust fund reserve to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve. The executive director may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached. If while achieving the trust fund reserve target the trigger of above three percent insured unemployment rate and an increase of more than one hundred ten percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase towards achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.

2. Rates must be determined as follows:

- a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate.
- b. ~~The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~ If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus five and one-tenth percent.
- c. ~~The maximum rate for each calendar year is the average required rate, multiplied by three, rounded to the nearest one-tenth of one percent.~~ The positive employer maximum rate must be set so that all the rates combined generate the average required rate. The negative employer maximum rate is the negative employer

minimum rate plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the ~~maximum~~ negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. However, an employer in construction services must be assigned the maximum rate of seven percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year. An employer identified as belonging to industry group number 161, highway and street construction, except elevated highways, provided in the standard industrial classification manual, must be assigned a maximum rate of eight and one-half percent, whichever is greater, within the negative employer rate ranges with an additional one and one-half percent added to the rate for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first of that year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's tax rate, for the calendar years 2000, 2001, and 2002. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.
- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
 - (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of two and two-tenths percent ~~percent~~ the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified

- in construction services. However, an employer must be assigned ~~the maximum rate~~ within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
- (2) New employers in construction services must be assigned a ~~rate of seven percent or the maximum rate, whichever is greater~~ the negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.
4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable. Such employer's rate, however, must be determined in accordance with subsection 3.

(Effective after December 31, ~~2000~~ 1999) Determination of rates.

1. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, is equal to twenty-five percent of the average annual amount of benefits paid. On each October first after October 1, 1989, the amount of the trust fund reserve must be sixty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three. On January 1, 2000, the required amount of the trust fund reserve becomes a targeted amount as determined under this subsection. The solvency target is an average high cost multiple of one. The average high cost multiple is the number of years the bureau could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended, [26 U.S.C. 3309]. The trust fund reserve target will be achieved over a seven-year period from January 1, 2000. Progress toward achieving the targeted amount of the trust fund reserve is measured by reducing any difference between one and the average

high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the trust fund reserve to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve. The executive director may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. When the trust fund reserve is being rebuilt, rates will not be lowered until the target level is reached. If while achieving the trust fund reserve target the trigger of above three percent insured unemployment rate and an increase of more than one hundred ten percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase towards achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.

2. Rates must be determined as follows:

- a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of one percent is the average required rate.
- b. ~~The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.~~ If the positive employer maximum rate is at least one percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of one percent. If the positive employer maximum rate is less than one percent, the range for the positive employer minimum rate must be at least one-tenth of one percent and must be less than two-tenths of one percent (the minimum of one-tenth of one percent plus the increment of one-tenth of one percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of one percent as provided in subsection 2 of section 52-04-06 to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus five and one-tenth percent.
- c. ~~The maximum rate for each calendar year is the average required rate, multiplied by three, rounded to the nearest one-tenth of one percent.~~ The positive employer maximum rate must be set so that

all the rates combined generate the average required rate. The negative employer maximum rate is the negative employer minimum rate plus three and six-tenths percent. However, the maximum rate must be at least five and four-tenths percent.

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the ~~maximum~~ negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. However, an employer in construction services must be assigned the maximum rate of seven percent, whichever is greater, for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.
- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
 - (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of ~~two and two-tenths percent~~ the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned the maximum rate within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

- (2) ~~New employers in construction services must be assigned a rate of seven percent of the maximum rate, whichever is greater the~~ negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.
4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable. Such employer's rate, however, must be determined in accordance with subsection 3.

SECTION 2. AMENDMENT. Section 52-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-04-06. Variations in standard rate of contributions - How determined.

1. ~~All employers eligible for an experience rate computation must be ranked in descending order by their reserve ratios. An employer's reserve ratio is the percentage of the average annual payroll by which difference between the cumulative six-year contributions paid by that employer on or before October thirty-first of any year, with respect to wages paid by that employer before October first of that same year, exceeds and the cumulative six-year benefits charged to that employer's account before October first of that year, divided by the average annual payroll. Employers whose cumulative contributions exceed cumulative benefits must be assigned within the positive employer rate groups. Employers whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.~~
2. ~~For each calendar year the bureau shall establish a schedule of rates, with the minimum rate determined under section 52-04-05 assigned to the first rate group. Each successive rate group must be assigned a rate equal to the previous group's rate plus two-tenths of one percent. The number of rate groups in the schedule must be the number required to provide for a rate group at each two-tenths of one percent interval between the minimum rate and two and one-fourth times the average required rate determined under section 52-04-05. For each calendar year the bureau shall establish a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate plus one-tenth of one percent. The number of rate groups in the positive employer schedule must be the number required to provide for a rate group at each one-tenth of one percent interval between the positive employer minimum rate and the positive employer maximum rate determined under section 52-04-05. For each calendar year the bureau shall establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05.~~

Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of one percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of one percent interval between the negative employer minimum rate and the negative employer maximum rate determined under section 52-04-05.

3. Employers must be assigned to the groups in the rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio employers assigned to the first rate group. Each successively ranked employer must be assigned to the groups in the rate schedule so that those employers reporting seventy-eight percent of the eligible employer's prior year's taxable wages are equally distributed in these rate groups at or below the average rate required of employers eligible for experience rating or the minimum rate group, whichever is greater, and twenty-two percent of those wages are equally distributed in the remaining rate groups. Positive employers must be assigned to the rate in the positive employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio positive employers assigned to the first positive employer rate. Each successively ranked positive employer must be assigned to a rate within the positive employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the positive employers prior year's taxable wages. Negative employers must be assigned to the rate in the negative employer rate schedule in the rank order of their reserve ratios, as determined in subsection 1, with the highest reserve ratio negative employers assigned to the first negative employer rate. Each successively ranked negative employer must be assigned to a rate within the negative employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the negative employer's prior year's taxable wages.
4. The average rate of employers eligible for experience rating is determined as follows:
 - a. The estimated amount of taxes to be paid each year by employers not eligible for experience rating must be subtracted from the total required income for the year determined under section 52-04-05.
 - b. The remainder must be divided by the estimated taxable wages of those employers eligible for experience rating, with the result rounded to the nearest one-tenth of one percent.
5. After each year's rate schedule has been established, an employer may pay into the fund an amount in excess of the contributions required to be paid under this section. That amount must be credited to the employer's separate account. The employer's rate must be recomputed with the amount included in the calculation only if that amount was paid by April thirtieth of that year. Payments may not be refunded or used as credit in the payment of contributions.
6. 5. In the bureau's determination of the projected income requirements for computing contribution rates and taxable wage base, only the wages paid by, and the cost of benefits attributable to, tax-rated employers may be taken into account.

7. 6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll, the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

SECTION 3. AMENDMENT. Section 52-04-09 of the North Dakota Century Code is amended and reenacted as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year must be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If when such determination is to be made an employer has failed to file a required report or filed an insufficient report, the bureau shall notify the employer thereof by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year may not be less than the negative employer maximum rate. For employers identified as belonging to industry group number 161, highway and street construction, except elevated highways, for the effective period set forth in section 52-04-05, the employer's rate for the following calendar year may not be less than the negative employer maximum rate plus one and one-half percent. If, at any time, an employer has failed to file a required report or filed an insufficient report, the bureau may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. The bureau shall notify the employer of the estimate by certified mail addressed to the employer's last known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate becomes final for all purposes, except that if the amount of estimated wages is less than the actual wages, the bureau may reconsider the estimate.

SECTION 4. AMENDMENT. Section 52-06-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-06-05. (Effective through December 31, 1999) Maximum potential benefits.

1. Except as provided in subsection 2, 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 that 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 |
|---|--------------------------------|
| 1.50 to 2.29 | 12 |
| 2.30 to 2.44 | 14 |
| 2.45 to 2.59 | 16 |
| 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 |

2. Any otherwise eligible individual ~~whose entire~~ with at least sixty percent of that individual's base-period earnings were paid by an employer belonging to industry group number 161, highway and street construction, except elevated highways, pursuant to the standard industrial classification manual 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 that 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 |
|---|--------------------------------|
| 1.50 to 1.73 | 12 |
| 1.74 to 1.97 | 14 |
| 1.98 to 2.21 | 16 |
| 2.22 to 2.45 | 18 |
| 2.46 to 2.69 | 20 |
| 2.70 to 2.93 | 22 |
| 2.94 to 3.17 | 24 |
| 3.18 or more | 26 |

(Effective after December 31, 1999) 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 |
|---|--------------------------------|
| 1.50 to 2.29 | 12 |
| 2.30 to 2.44 | 14 |
| 2.45 to 2.59 | 16 |
| 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 |

SECTION 5. JOB SERVICE NORTH DAKOTA - REPORT TO LEGISLATIVE COUNCIL - LEGISLATIVE COUNCIL RECOMMENDATIONS.

During the 1999-2000 interim, job service North Dakota shall review possible incentives to encourage an employee to decrease the length of time that employee receives unemployment compensation benefits and to encourage a negative employer to become a positive employer and job service North Dakota shall report the results of this review to the legislative council. The legislative council shall report its recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

Approved April 22, 1999
Filed April 22, 1999

CHAPTER 436**HOUSE BILL NO. 1269**
(Representative Keiser)**UNEMPLOYMENT COMPENSATION BENEFIT
DISQUALIFICATION**

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For the week in which ~~he~~ the individual has left ~~his~~ the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as ~~he~~ the individual:
 - a. Can demonstrate that ~~he~~ the individual has earned remuneration for personal services in employment equivalent to at least eight times ~~his~~ the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left ~~his~~ the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's work force in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if the bureau determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a

physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times ~~his~~ the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 437

HOUSE BILL NO. 1091

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION BENEFIT DETERMINATION

AN ACT to amend and reenact subsection 1 of section 52-06-04 of the North Dakota Century Code, relating to determination of weekly benefit amount for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The procedures, provisions, and conditions of this section must determine the "weekly benefit amount" of those individuals who establish a benefit year ~~on and after July 1, 1973:~~
 - a. For the purpose of this section, the bureau shall each year, on or before the first day of June, determine the average annual wage paid to insured workers and, from that determination, an "average weekly wage", by the following computation:

The total wages reported on contribution reports for the preceding calendar year must be divided by the average monthly number of covered workers, whose number must be determined by dividing by twelve the total covered employment reported on contribution reports for the preceding calendar year, and the quotient obtained by dividing the total wages by the average monthly number of covered workers is the average annual wage; and such quotient must be divided by fifty-two and the amount thus obtained, rounded to the nearest cent, is the "average weekly wage".
 - b. An individual's "weekly benefit amount" is one sixty-fifth (if not a multiple of one dollar, to be computed to the next lower multiple of one dollar) of the sum of:
 - (1) The individual's total wages for insured work paid during the two quarters of the individual's base period in which the individual's wages were the highest; and
 - (2) One-half of the individual's total wages for insured work paid during the third highest quarter in the individual's base period.

However, if that amount is less than the "minimum weekly benefit amount" the individual is monetarily ineligible for benefits. The "minimum weekly benefit amount" is forty-three dollars. ~~For benefit years beginning after August 8, 1987, the~~ The "maximum weekly benefit amount" is ~~sixty~~ sixty-two percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. However, if on October first of any calendar year ~~beginning with the calendar year 1989, the trust fund reserve is equal to or greater than the required amount, then as of July first of the next year, the maximum weekly benefit amount is sixty-two percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. Further, if on October first of any calendar year beginning with the calendar year 1989, the trust fund reserve is equal to or greater than the required amount, and if this state's average contribution rate is below the nationwide average for the preceding calendar year, then the maximum weekly benefit amount is sixty-five percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. The average contribution rate is determined on the basis of total contributions divided by total wages.~~

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 438**HOUSE BILL NO. 1090**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

**UNEMPLOYMENT COMPENSATION BENEFIT
ASSIGNMENT**

AN ACT to amend and reenact subsection 1 of section 52-06-30 of the North Dakota Century Code, relating to assignment of unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the North Dakota Unemployment Compensation Law is valid. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of a debt. Benefits received by any individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual, that person's spouse, or dependents during the time when the individual was unemployed. No waiver of any exemption provided for in this subsection is valid. However, this subsection does not impair the operation of subsection 2 or section 52-06-06.1 or the continuous levy authorized under Public Law No. 105-34, Section 1024 [111 Stat. 923-924; 26 U.S.C. 6331(h)].

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 439

HOUSE BILL NO. 1443

(Representatives Dorso, Byerly, Koppang)
(Senators Kringstad, Robinson, Traynor)

WORK FORCE TRAINING

AN ACT to create and enact five new sections to chapter 52-08 of the North Dakota Century Code, relating to work force training; to amend and reenact subsection 6 of section 15-10-01 and subsection 13 of section 15-10-17 of the North Dakota Century Code, relating to name changes of institutions of higher education; to repeal section 15-11-02.1 of the North Dakota Century Code, relating to supervision of the college at Devils Lake; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 15-10-01 of the North Dakota Century Code is amended and reenacted as follows:

6. The following ~~junior colleges and off-campus educational center:~~ Bismarck state college, ~~university of North Dakota - Lake Region state college,~~ and ~~the university of North Dakota - Williston center state college.~~

²⁸⁰ **SECTION 2. AMENDMENT.** Subsection 13 of section 15-10-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. To establish a retirement program as an alternative to chapter 15-39.1 for employees of institutions under its control, subject to the following guidelines:
 - a. Benefits under the program ~~shall~~ must be provided through annuity contracts purchased by the board but which ~~shall~~ become the property of the participants;
 - b. The cost of the annuity contracts ~~shall~~ must be defrayed by contributions made pursuant to rules of the state board of higher education;
 - c. Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates then being paid by the Bank of North Dakota

²⁸⁰ Section 15-10-17 was also amended by section 2 of House Bill No. 1186, chapter 157.

~~shall~~ must be transferred to the employee's account in the alternate program. ~~Such~~ The election ~~shall~~ must be made ~~prior to~~ before July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2;

- d. Employees of Bismarck state college and ~~university of North Dakota~~ - Lake Region state college coming under the jurisdiction of the board who are members of the teachers' fund for retirement may elect ~~prior to~~ before July 1, 1985, to continue membership in the teachers' fund for retirement in lieu of the alternate retirement program. If an employee does not elect to continue membership in the teachers' fund for retirement, membership in that fund will terminate and the employee will become a member of the alternate retirement program established by the board effective July 1, 1985. An employee of ~~the above-named these~~ colleges who becomes a member of the alternate retirement program may elect ~~prior to~~ before July 1, 1985, to have the employee's assessments and employer's contributions in the teachers' fund for retirement with interest transferred by the board of trustees of the teachers' fund for retirement to the employee's account in the alternate retirement program. If an employee elects to transfer the employee's assessment and employer's contributions together with interest to the alternate retirement program, the employee relinquishes all rights the employee or the employee's beneficiary may have to benefits provided in chapters 15-39, 15-39.1, and 15-39.2; and
- e. Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system ~~prior to~~ before March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

The board shall provide for the administration of the alternate retirement program and establish rules ~~therefor~~ for the program consistent with the foregoing guidelines this subsection. ~~Nothing in this~~ This subsection shall be construed in derogation of ~~does not derogate~~ any existing retirement programs approved by the board.

SECTION 3. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Institution to serve work force needs. Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for work force training shall establish a division or other unit within the institution to serve the work force needs of business and industry and to serve as a broker in arranging the delivery of training.

SECTION 4. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Work force training board - Formation. Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for work force training shall appoint a work force training board consisting of representatives from businesses, labor, and industries located within the institution's delivery area. The work force training board must consist of at least seven but no more than fifteen members and must include at least one representative from either an Indian-owned business, the tribal government, or the tribal colleges within the designated region.

SECTION 5. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Preparation of business plan - Revolving loans. Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for work force training shall prepare an annual business plan that must include provisions for use of the training capacity of the tribal colleges within the designated region, in consultation with the work force training board. The work force training board shall approve the business plan and make recommendations for funding of the business plan to the state board of higher education. The state board of higher education may establish for each institution of higher education assigned primary responsibility for work force training a revolving loan fund for work force training program startups using the borrowing authority provided in section 15-10-16.1.

SECTION 6. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Performance measurements for work force training. Subject to state board of higher education policies, the president of an institution of higher education that is assigned primary responsibility for work force training shall develop, in consultation with the work force training board, performance measurements for work force training. The measurements must include requirements for being time sensitive and results oriented and must determine how well the training needs of business and industry are being met.

SECTION 7. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Work force training - Investment fee.

1. Except for employers with fewer than twenty-five employees and public and private elementary and secondary schools, job service North Dakota shall assess each employer a work force training investment fee of three one-hundredths of one percent of taxable wages paid by the employer to employees during each calendar year. The work force training investment fee is a fee separate from contributions made under chapter 52-04 and may not be deposited in the unemployment compensation fund. Job service shall assess the fee on an annual basis and may assess the fee in the same manner as it collects contributions and taxable wages reported by reimbursing employers under chapter 52-04. The work force training investment fee payments may not be included in computing unemployment compensation rates assigned to employers and may not be deducted by an employer from the wages of the employer's employees.
2. Funds collected under this section must be deposited in a work force training investment account and used to provide work force training programs at institutions of higher education that are assigned primary responsibility for work force training as defined by the state board of higher education. Administrative costs incurred by job service for collection of the work force training investment fee and for costs related to the establishment and maintenance of the work force training investment account must be paid from the work force training investment account. The funds may not be used by institutions of higher education for capital construction projects. The funds must be used to provide work force training, including operation and administration of a training division, acquisition of equipment, marketing, and program development. The institutions of higher education, job service, the work force 2000 advisory board and the tribal colleges in the state shall cooperate in addressing work force training needs in the state.
3. The state board of higher education shall establish up to four regions reflecting the geographical areas of work force training responsibility for the institutions of higher education eligible for funds under this section. Funds collected under this section must be allocated for use in the region of the state in which the funds were collected based upon covered employment, as defined by job service, in that region of the state.
4. Each institution of higher education providing a work force training program shall submit a report annually to the legislative council, the governor, the state board of higher education, the state board for vocational and technical education, and the North Dakota work force development council regarding the work force training programs receiving funds under this section.

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 \$875,000, or so much of the sum as may be necessary, to the state board for vocational and technical education for the purpose of contracting with institutions of higher education assigned primary responsibility for work force training in this state for the biennium beginning July 1, 1999, and ending June 30, 2001.

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 \$71,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of creating the collection structure and administering collection of the work force training investment fee for providing work force training programs under this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 10. APPROPRIATION. There is hereby appropriated out of any moneys in the work force training investment account, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the state board for vocational and technical education for the purpose of contracting with institutions of higher education assigned primary responsibility for providing work force training programs under this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 11. APPROPRIATION. There is hereby appropriated out of any moneys in the work force training investment account, not otherwise appropriated, the sum of \$40,000, or so much of the sum as may be necessary, to job service North Dakota for the purpose of administering the collection of the work force training investment fee for providing work force training programs under this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 12. REPEAL. Section 15-11-02.1 of the North Dakota Century Code is repealed.

Disapproved April 19, 1999
Filed April 19, 1999

NOTE: Sections 7, 9, 10, and 11 were vetoed by the Governor, see chapter 562.

CHAPTER 440

HOUSE BILL NO. 1070

(Government and Veterans Affairs Committee)
(At the request of Job Service North Dakota)

OASIS BENEFITS

AN ACT to amend and reenact sections 52-09-07, 52-09-08, and subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to contributions to and primary insurance benefits under the old-age and survivor insurance system; and to repeal sections 52-09-09, 52-09-10, 52-09-11, 52-09-12, and 52-09-13 of the North Dakota Century Code, relating to old-age and survivor insurance taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-09-07 of the North Dakota Century Code is amended and reenacted as follows:

52-09-07. Purposes for which fund may be used - Appropriation. All moneys ~~which~~ that are paid or deposited into the old-age survivors' fund are hereby appropriated and made available to the bureau to be used only for the purposes herein provided.

1. To be used by the bureau for the payment of claims for benefits under this chapter. From and after the execution date of the agreement with the United States pursuant to chapter 306 of the 1955 Session Laws extending social security coverage to services covered by this chapter, no benefits may be paid under this chapter except to:
 - a. Persons who are receiving benefit payments or are entitled to benefit payments, under section 52-09-14, by virtue of death or retirement occurring before ~~such~~ the agreement execution date, and to dependents and survivors of ~~such~~ fully insured persons whenever entitled and eligible. After ~~such~~ the agreement execution date, ~~no~~ quarters of coverage within the meaning of subsection 7 of section 52-09-20 may not be accrued.
 - b. Persons not entitled to benefits from any other public retirement plan but who would have been eligible under section 52-09-14 before 1960, and dependents and survivors of such fully insured persons whenever entitled and eligible.
 - c. Persons who had terminated covered employment, as defined in subsection 6 of section 52-09-20, before ~~such~~ the agreement execution date because of physical disability and who are not entitled to benefits from any other public retirement or disability plan but who would have been eligible under section 52-09-14, and dependents and survivors of such fully insured persons whenever entitled and eligible. The insured, or ~~his~~ that person's survivors, shall submit a medical diagnostic opinion establishing that ~~his~~ the insured's employment was terminated because of physical disability and that ~~such~~ the disability has prevented reemployment.

Notwithstanding subsection 1 ~~and subdivision a of subsection 4 of this section~~, the effective date referred to for policeman's and ~~fireman's~~ firefighter's positions shall be is on and after the day preceding the execution date of the agreement with the United States pursuant to chapter 306 of the 1955 Session Laws extending social security coverage to services covered by this chapter.

2. a. To be used by the bureau to pay ~~refunds provided for in section 52-09-10, and to pay~~ a prior service refund to any person who is not receiving any other payment under this chapter, who is employed on the date of the federal-state agreement covering services performed under this chapter and executed pursuant to chapter 306 of the 1955 Session Laws, or who was eligible to vote in the public employees' referendum held on December 20, 1956, pursuant to authorization of chapter 306, or to any employee or ~~his~~ the employee's survivor who has nineteen or more quarters of coverage on the date of ~~such~~ the federal-state agreement in an amount equal to the employee's individual contribution made between the dates July 1, 1947, and December 31, 1954, after ~~such~~ that person makes written application therefor to the bureau.
 - b. ~~No~~ A refund ~~will~~ may not be paid if the application was received after 1959. ~~No~~ A contribution ~~will~~ may not be refunded if the wages are used to determine benefit eligibility. If ~~such~~ the wages were used for a benefit determination, the person shall repay the amount of the refund or the bureau may deduct the amount from any payment due to the person.
3. Contributions may be paid for employers and employees to the United States pursuant to chapter 306 of the 1955 Session Laws, and pursuant to any federal-state agreement executed thereunder, and to provide coverage under federal social security retroactive to December 31, 1954, and up to July 1, 1957, for employees subject to that agreement. ~~Such~~ The amounts are to be transferred and paid into the social security contribution fund established by chapter 306 of the 1955 Session Laws.
4. ~~For the purposes of making payments under this section, if the balance in the old-age survivors' fund becomes insufficient to pay current obligations, the bureau is authorized to borrow necessary amounts from the Bank of North Dakota and to repay such loans from the employer tax set forth in section 52-09-09.~~
5. The legislative assembly may appropriate moneys from this fund to be used by the bureau for the purposes of administration of this chapter and chapter 52-10. The bureau ~~will~~ shall maintain complete and accurate records of all appropriations under this subsection, and expenditures made from those appropriations. All disbursements for administrative expenses from the fund must be paid by warrant-checks prepared by the bureau.

²⁸¹ **SECTION 2. AMENDMENT.** Section 52-09-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions. Taxes unpaid on the date on which they are due and payable, as prescribed by the bureau, must bear interest at the rate of one-half of one per centum per month from and after ~~such~~ that date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which ~~such~~ interest ~~shall~~ does not accrue with respect to taxes required. ~~In no case may the~~ The amount of interest imposed ~~hereby~~ may not be less than five dollars. Interest collected pursuant to this section must be paid into the old-age and survivors' fund.

- ~~1. If within thirty days after due notice, the employer defaults in payment of taxes or interest thereon, the amount due must be collected by civil action in the name of the bureau and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect taxes or interest thereon must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions.~~
- ~~2. The employer shall pay its tax or contribution from funds available and is directed to pay same from tax money or from any other income of the political subdivision.~~
- ~~3. The A political subdivision, except a school district, a multidistrict special education board, or a center board of an area vocational and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1. Within the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.~~

SECTION 3. AMENDMENT. Subsection 9 of section 52-09-20 of the 1997 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

²⁸¹ Section 52-09-08 was also amended by section 1 of Senate Bill No. 2358, chapter 501.

- (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
- b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
- c. (1) Effective August 1, ~~1997~~ 1999, ~~five~~ seven hundred thirty-three dollars and ~~thirty-three~~ thirty-two cents; or
(2) Effective August 1, ~~1998~~ 2000, ~~six~~ seven hundred ~~sixty-six~~ ninety-nine dollars and ~~sixty-six~~ ninety-eight cents.

SECTION 4. REPEAL. Sections 52-09-09, 52-09-10, 52-09-11, 52-09-12, and 52-09-13 of the North Dakota Century Code are repealed.

Approved March 29, 1999
Filed March 29, 1999

SPORTS AND AMUSEMENTS

CHAPTER 441

SENATE BILL NO. 2132

(Judiciary Committee)

(At the request of the State Gaming Commission)

GAMES OF CHANCE

AN ACT to amend and reenact sections 53-06.1-01, 53-06.1-01.1, 53-06.1-03, 53-06.1-06, 53-06.1-07.2, 53-06.1-07.3, 53-06.1-07.4, 53-06.1-10, 53-06.1-11, 53-06.1-11.1, 53-06.1-12.3, 53-06.1-14, 53-06.1-15.1, and 53-06.1-16 of the North Dakota Century Code, relating to games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions. As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax ~~and interest~~ imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization ~~incorporated as a nonprofit corporation~~ whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern; ~~which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.~~
3. "Civic and service organization" means an organization ~~incorporated as a nonprofit corporation~~ whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization; ~~and which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.~~
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.
5. "Compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and

with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

5. 6. "Distributor" means a person that sells, markets, or distributes equipment usable in the conduct of games.
6. 7. "Educational organization" means ~~any~~ a nonprofit public or private elementary or secondary school, two-year or four-year college, or university ~~in this state which has been active for the two immediately preceding years.~~
7. 8. "Eligible organization" means veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. 9. "Fraternal organization" means an organization, except a ~~college or high school~~ fraternity, 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. The organization must have ~~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~~ qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. 10. "Games" means games of chance.
40. 11. "Gross proceeds" means all cash and checks received from conducting games, sales tax on bingo cards, and admissions.
44. 12. "Licensed organization" means an eligible organization licensed by the attorney general.
42. 13. "Local permit" means a permit issued to a nonprofit organization or group of people domiciled in North Dakota by a governing body of a city or county.
43. 14. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, fabricates, or produces; or constructs a the product or equipment designed for the conduct of games. For a pull tab and or bingo card dispensing device, a manufacturer is means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
44. 15. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
45. 16. "Person" means any person, partnership, corporation, limited liability company, association, or organization.

- 46: 17. "Public safety organization" means an organization ~~incorporated as a nonprofit corporation~~ whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance; ~~which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.~~
- 47: 18. "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, economic development, tourism, community recreation, or similar organization, which does not meet the definition of ~~veterans, fraternal, charitable, educational, religious, civic and service, or public safety~~ any other type of eligible organization; ~~and which has been actively fulfilling its primary purpose within this state for the two immediately preceding years.~~ However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a local permit does not need to meet this definition.
- 48: 19. "Qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering compulsive gambling education, prevention, awareness, crisis intervention, rehabilitation, and financial counseling and mental health treatment services as defined by the department of human services.
- 49: 20. "Religious organization" means a ~~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 gathered or united in this state for the two immediately preceding years.~~
- 20: 21. "Veterans organization" means any congressionally chartered post organization ~~within this state~~, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. ~~An~~ The organization must have been 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 qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

SECTION 2. AMENDMENT. Section 53-06.1-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01.1. Gaming commission.

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.

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 found guilty 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 found guilty of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been found guilty of any offense or violation that has a direct bearing on the person's fitness to be involved in gaming, or who has committed an equivalent offense or violation of the laws of another state or of the United States. A person who has a financial interest in gaming cannot be a member or employee of 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.
3. Commission members are entitled to forty dollars per day for compensation for each day spent on commission duties, and mileage and expense reimbursement as allowed to other state employees.
4. ~~The attorney general shall represent the state in all hearings before the commission. The commission may employ private counsel.~~
5. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns and reports from organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards for the manufacture of pull tabs, paper bingo cards, and pull tab and bingo card dispensing devices; to ensure that net proceeds are disbursed to educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

SECTION 3. AMENDMENT. Section 53-06.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03. Local permits, site authorization, and licenses.

1. ~~An~~ Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or local permit. Only one of two or more closely related organizations may have a license or local permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a local permit as follows:

- a. ~~A nonprofit~~ An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools ~~in which~~. The organization or closely related organizations as a whole may only award a primary prize that does not exceed one thousand dollars; and the total prizes of all games that do not exceed six thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body which should in its determination consider the definition of a public-spirited organization under subsection 18 of section 53-06.1-01 and eligible uses of net proceeds under subsection 2 of section 53-06.1-11.1. A governing body may issue a local permit for ~~the~~ games to be held at designated times and places.
 - b. An ~~eligible~~ organization shall apply to the governing body of the city or county in which the proposed site where the gaming activity to be conducted is located. Application for a local permit must be made on a form prescribed by the attorney general. ~~If the nonprofit organization is a North Dakota college or university fraternity, sorority, or club, the organization shall provide a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity, sorority, or club.~~ Approval may be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each local permit. A local permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.
 - c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use gaming proceeds for any purpose that does not violate this chapter or gaming rules.
2. An eligible organization shall apply for a license to conduct only bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
 - a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body may not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
 - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and including with the application remitting a one hundred fifty dollar license fee. An organization shall sufficiently document that it

qualifies as an eligible organization. If a ~~licensed~~ an organization amends its primary purpose as stated in its articles of incorporation or materially changes its basic character ~~in a material manner~~, the organization shall reapply for licensure.

3. A licensed organization ~~may~~ or organization that has a local permit shall conduct games ~~only on an authorized site~~ as follows:
 - a. Only one licensed organization or organization that has a local permit ~~at a time~~ may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by a ~~second~~ another licensed organization or organization that has a local permit when one of these conditions is met:
 - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular ~~licensee~~ organization.
 - (2) Upon request of the regular ~~licensee~~ organization and with the approval of the alcoholic beverage establishment, the ~~licensee's~~ regular organization's license or local permit is suspended for that specific time of day by the attorney general.
 - b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites. ~~Only one of two or more closely connected organizations may have a license at one time. Closely connected organizations are two or more organizations which have an interdependent relationship, based on the presence and degree of unitary attributes. These attributes may include common primary purposes, members on boards of directors, officers, management, administrative and operating services, membership, program services, integrations of gaming activities, and shared facilities.~~
 - c. Games of pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
 - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit a person under eighteen years of age to directly or indirectly play bingo unless the person is accompanied by an adult, bingo is conducted by an organization that has a local permit, or the game's prize structure does not exceed that allowed for a local permit.
4. A local permit, or site authorization, and license, and rules relating to the conduct and play of games must ~~contain information prescribed by~~

~~the attorney general or local governing body and must be displayed at a site.~~

5. ~~The attorney general shall license an eligible organization that complies with this chapter and~~ may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions.
6. A governing body or local law enforcement official may inspect a site's gaming equipment, and examine or cause to be examined the books and records of a licensed organization or organization that has a local permit to the extent that the books and records relate to any transaction involving the direct or indirect conduct of games.

SECTION 4. AMENDMENT. Section 53-06.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-06. Persons permitted to conduct games - Equipment.

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a local permit, or an employee of a temporary employment agency who provides services to a licensed organization, may conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs or bingo through a dispensing device, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.
2. Except when authorized by the attorney general or allowed by the gaming rules, an eligible organization shall procure gaming equipment only from a licensed distributor. No equipment or prizes may be purchased at an excessive price.
3. An organization shall maintain complete, accurate, and legible accounting records in North Dakota for all gaming activity and establish an adequate system of internal control. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and distribution of net proceeds. If an organization does not renew its license or its license is denied, relinquished, or revoked and it has not disbursed all of its net proceeds, the organization shall file an action plan as prescribed by the gaming rules with the attorney general.
4. The value of a merchandise prize awarded in a game is its retail price.
5. A person is restricted from being involved in gaming and the attorney general shall conduct criminal history record check as follows:
 - a. A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, a gaming rule, chapter 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters may not be a licensed distributor,

may not be employed by a licensed distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.

- b. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section ~~6-08-16.2~~ 6-08-16.1 or chapter 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses may not be a licensed distributor, may not be employed by a licensed distributor to sell or distribute gaming equipment, and may not be employed by a licensed organization to conduct games on a site for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
 - c. ~~The~~ Unless an employee is exempt by the gaming rules or attorney general, the attorney general shall conduct a criminal history record check of each ~~potential~~ employee of a licensed organization or distributor and charge a fee of twenty dollars ~~per record check in accord with section 12-60-16.9~~. The fee may be waived ~~in part or in whole~~ by the attorney general if a federal agency or local law enforcement agency has done a record check. The attorney general may require advance payment of any additional fee necessary to ~~defray~~ pay the ~~actual~~ cost of a background record check of a person for whom adequate background information sources are not readily available, ~~including a person who has not resided in North Dakota for the previous five years~~. The attorney general may require payment of the estimated additional fee in advance as a condition precedent to beginning the background check. The attorney general shall notify the person when a determination is made that an additional fee is necessary and shall notify the person of the best estimate of the amount of the additional fee. ~~In lieu~~ Instead of paying the additional cost fee, a person may cancel the background record check. The ~~estimated cost~~ advance payment must be placed in the attorney general's refund fund ~~for use to defray the actual expenses of the background check~~. The ~~remainder of the unused~~ funds must be returned to the person within thirty days of the conclusion of the background record check. The attorney general shall notify the organization or distributor and the person of the result of the background check. The attorney general shall ~~hold~~ keep the information confidential except in the proper administration of this chapter or any gaming rule, or to provide to an authorized law enforcement agency.
6. ~~A~~ For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization may not pay bingo prizes in which the total bingo prizes ~~exceeds~~ exceed total bingo gross proceeds for a period prescribed by gaming rule. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the total of the bingo prizes.
 7. A city or county may require a person conducting games to obtain a local work permit, charge a reasonable fee, and conduct a criminal

history record check. A fee may not exceed the actual expense of processing an application.

SECTION 5. AMENDMENT. Section 53-06.1-07.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.2. Poker. ~~A licensed organization may conduct poker~~ Poker may be conducted on not more than two occasions per year. An organization may supply the dealer. The maximum single bet is one dollar. 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 poker apply.~~ An organization shall assess each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. A fee may be charged each player for entry into a tournament for prizes and this fee may be in place of or in addition to the fee assessable at one-half hour intervals.

SECTION 6. AMENDMENT. Section 53-06.1-07.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.3. Calcuttas. A calcutta may only be conducted for a professional or amateur sporting event held in this state, but not for elementary, secondary, or postsecondary education sports events. ~~An organization shall post at the site all rules affecting the conduct and play of calcuttas. An organization may not have an interest in the outcome of the calcutta. A player must place a wager in the calcutta auction pool at the site. No more than~~ Only one wager per competitor may be allowed in ~~any~~ a calcutta pool. The amount of prizes may not exceed ninety percent of the gross proceeds. A player may not place a wager on a competitor in a calcutta sporting event unless the competitor is eighteen years of age or older.

SECTION 7. AMENDMENT. Section 53-06.1-07.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.4. Paddlewheels. ~~An organization shall post at the site rules relating to paddlewheels.~~ 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 to indicate the winning number or symbol. The maximum price per ~~wager~~ paddlewheel ticket is two dollars. No money may be used ~~to bet on the table as a wager.~~ A table and chips must be used to register a player's wager when a prize is a variable multiple of the wager. ~~A~~ Otherwise, a paddlewheel ticket must be used ~~to register a player's wager when a prize is not a variable multiple of the wager.~~ A player may not place wagers 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 retail value of the merchandise prize to be awarded for a winning wager may exceed one hundred dollars.

SECTION 8. AMENDMENT. Section 53-06.1-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. No money may be ~~allowed on the table used~~ used as a wager. The organization shall provide playing chips of various denominations to players. ~~Chips must be redeemed by the organization for their full value.~~ The maximum limit per wager may be set by the 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. Each player plays the player's hand against the dealer's hand. ~~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 a natural twenty-one and is an automatic payout except in a tie count with the dealer. Players may double down on a natural twenty-one. For a tie count between the player and the dealer, no winner is declared and the player keeps the player's wager. An organization may allow pooling of tips received by dealers at a site. Any requirement to pool tips is within the sole discretion of each organization. An organization shall post rules relating to twenty-one. Except for a site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, an organization may not conduct twenty-one at the site with wagers exceeding two dollars unless the organization has first installed video surveillance equipment as required by rules and the equipment is approved by the attorney general.

SECTION 9. AMENDMENT. Section 53-06.1-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11. Gross proceeds - Allowable expenses - Rent limits.

1. All money received from games must be accounted for according to the gaming rules. Gaming activity for a quarter must be reported on a tax return form prescribed by the attorney general. The Unless otherwise authorized by the attorney general, the purchase price of a merchandise prize must be paid from a gaming bank account by check. No check drawn from a gaming or trust bank account may be payable to "cash" or a fictitious payee. A cash prize that exceeds an amount set by rule must be accounted for by a receipt prescribed by the gaming rules.
2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is 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. In addition, an organization may deduct as an allowable expense:
 - a. Two and one-half percent of the gross proceeds of pull tabs.
 - b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.
3. Cash shorts incurred in games and interest and penalty are classified as expenses.
4. For a site where bingo is conducted:
 - a. Except under subdivision c, if bingo is the primary game, the monthly rent must be reasonable.
 - b. If bingo is not the primary game, but is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
 - c. If bingo is conducted through a dispensing device and no other game is conducted, the monthly rent may not exceed two hundred ~~twenty-five~~ seventy-five dollars.

5. For a site where bingo is not the primary game:
 - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not exceed an additional one hundred ~~twenty-five~~ seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional two hundred dollars.
 - b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving a jar bar or dispensing device, but not both, the monthly rent may not exceed two hundred ~~twenty-five~~ seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed three hundred dollars.

SECTION 10. AMENDMENT. Section 53-06.1-11.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-11.1. Restricted use of money in certain political activities - Eligible uses of net proceeds.

1. A licensed organization or an organization that has a local permit may not use money from any source for placing an initiated or referred measure on a ballot or for a political campaign to promote or oppose a person for public office. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a local permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives. Any funds expended by ~~an~~ a licensed organization or an organization that has a local permit to promote or oppose an initiated or referred measure that is on the ballot or for any activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. A violation of this ~~section~~ subsection subjects an organization to a suspension of its license or local permit for up to one year.
2. A licensed organization shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
 - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
 - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
 - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:

- (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
 - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
 - (3) Assistance to libraries and museums.
 - (4) Assistance for the performing arts and humanities.
 - (5) Preservation of cultural heritage.
 - (6) Youth community, social welfare, and athletic activities.
 - (7) Adult amateur athletic activities within the state, ~~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~~ Assistance to an individual or family suffering from poverty or homelessness.
 - (2) Encouragement and enhancement of the active participation of the elderly in our society.
 - (3) Services to the abused.
 - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
 - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
 - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
 - (7) Funds for emergency relief and volunteer services.
 - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
 - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.

- (10) Funds for crime prevention, fire protection and prevention, and public safety.
 - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
 - f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, 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 do not qualify.
 - g. The erection or maintenance of public buildings, utilities, or waterworks.
 - h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
 - i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
 - j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
 - k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
 - l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
 - (1) Funds for adult bands, including drum and bugle corps.
 - (2) Funds for trade shows and conventions conducted in this state.
 - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife ~~propagation~~ reproduction and habitat enhancement program.
 - (4) Funds for public transportation, community celebration, and recreation.

- (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.
3. The uses in subsection 2 do not include the erection, acquisition, improvement, maintenance, or repair of real or personal property owned or leased by an organization unless it is used exclusively for an eligible use. ~~No part A licensed organization or recipient of net proceeds after they have been disbursed to an eligible use recipient may be used by the donee to pay any person not use net proceeds for services rendered or materials purchased in connection with administrative or operating expenses involving the conduct of games by the donor organization.~~

SECTION 11. AMENDMENT. Section 53-06.1-12.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12.3. Interest and, penalty, and estimated tax. ~~The attorney general shall assess a licensed organization interest and penalty as follows:~~

1. Assessment of interest. If an organization does not pay tax due by the original date of a tax return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original due date of the return, the organization shall pay interest on the tax at the rate of twelve percent per annum computed from the original due date of the return through the date the tax is paid.
2. Assessment of penalty. If an organization does not pay tax due on a tax return by the original or extended due date of the return, or if additional tax is due based on an audit or math verification of the return and it is not paid by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater. If an organization does not file a tax return by the original or extended due date of the return, the organization shall pay a penalty of five percent of the tax, or twenty-five dollars, whichever is greater, for each month or fraction of a month during which the return is not filed, not exceeding a total of twenty-five percent.
3. The attorney general may require a licensed organization to make monthly estimated gaming and excise tax payments if the attorney general determines that the organization is in poor financial condition. If an organization fails to pay any tax or estimated tax, interest, or penalty by the original due date or date set by the attorney general, the attorney general may bring court action to collect it and may suspend the organization's license. The attorney general may for good cause

waive all or part of any interest or penalty and may waive any minimal tax.

4. If an organization has failed to file a tax return, has been notified by the attorney general of the delinquency, and refuses or neglects within thirty days after the notice to file a proper return, the attorney general shall determine the adjusted gross proceeds and gaming and excise taxes due according to the best information available and assess the taxes at not more than double the amount. Interest and penalty also must be assessed.

²⁸² **SECTION 12. AMENDMENT.** Section 53-06.1-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-14. Distributors and manufacturers.

1. A manufacturer of pull tabs, bingo cards, and or pull tab dispensing devices, and a distributor shall apply annually for a license upon a form prescribed by the attorney general before the first day of April in each year. The license fee for a distributor is one thousand five hundred dollars. The license fee for a manufacturer is four thousand dollars.
2. A licensed distributor may not sell, market, or distribute gaming equipment except to a licensed distributor, licensed organization, organization that has a local permit, or other person authorized by gaming rule or the attorney general. A manufacturer of a pull tab dispensing ~~devices~~ device, pull ~~tabs~~ tab, or bingo ~~cards~~ card may only sell, market, or distribute the manufacturer's pull tab dispensing ~~devices~~ device and processing chip encoded with proprietary software, pull ~~tabs~~ tab, or bingo ~~cards~~ card to a licensed distributor. ~~A distributor may purchase or acquire pull tabs or bingo cards only from a licensed manufacturer or licensed distributor.~~ A licensed distributor may purchase or acquire a ~~new~~ pull tab dispensing device and processing chip encoded with proprietary software, pull tab, or bingo card only from a licensed manufacturer or licensed distributor. However, a distributor may purchase or acquire a used pull tab dispensing device from a licensed organization. A distributor may not duplicate a manufacturer's processing chip encoded with proprietary software. No gaming equipment or prizes may be sold at an excessive price.
3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold and shall purchase the stamps from the attorney general for twenty-five cents each.
4. A licensed organization, organization that has a local permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor or stockholder of a distributor. ~~A licensed manufacturer may not have any financial interest in a~~

²⁸² Section 53-06.1-14 was also amended by section 9 of Senate Bill No. 2003, chapter 25.

~~distributor.~~ A distributor may not ~~have any financial interest in~~ be a stockholder of a licensed manufacturer.

5. In addition to the license fee, the attorney general may require advance payment of any ~~additional~~ fee necessary to ~~defray~~ pay the ~~actual~~ cost of a ~~background~~ record check of an applicant ~~by following the procedures prescribed by~~ according to subdivision c of subsection 5 of section 53-06.1-06.

SECTION 13. AMENDMENT. Section 53-06.1-15.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-15.1. Authority of the attorney general. The attorney general may:

1. Inspect all sites in which gaming is conducted or inspect all premises where gaming equipment is manufactured or distributed. The attorney general may require a licensed manufacturer to reimburse the attorney general for the reasonable actual cost of transportation, lodging, meals, and incidental expenses incurred in inspecting the manufacturer's facility.
2. Inspect all gaming equipment and supplies on a site or premises.
3. Seize and remove from a site or premises and impound any gaming equipment, supplies, games, 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 seventy-two 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, organizations, lessors, manufacturers, ~~and~~ distributors, ~~including any~~ and affiliated companies on their premises concerning any income or expense resulting from any gaming activity, determine compliance with this chapter or gaming rules, and require verification of income, expense, or use of net proceeds, and all other matters affecting this chapter.
5. ~~The attorney general may permit~~ Permit the commissioner or proper representative of the internal revenue service of the United States to inspect a tax return or furnish a copy of the tax return, or information concerning any item contained in the return, or disclosed by any audit or investigation report of the gaming activity of any organization or player, or recordkeeping information. However, information cannot be disclosed to the extent that the attorney general determines that the disclosure would identify a confidential informant or seriously impair any civil or criminal investigation. Except when directed by judicial order, or for pursuing civil or criminal charges regarding a violation of this chapter or a gaming rule, or as is provided by law, the attorney general may not divulge nor make known, to any person, any income or expense item contained in any tax return or disclosed by an audit or investigative report of any taxpayer, provided to the attorney general by the internal revenue service.
6. Require a representative of a licensed organization or distributor to participate in training or for good cause prohibit the person from being

involved in gaming as an employee or volunteer. The attorney general may for good cause prohibit a person from providing personal or business services to an organization or distributor.

7. Prohibit a person from playing games if the person violates this chapter, chapter 12.1-28, or 53-06.2, or a gaming rule.
8. Require a licensed organization to pay a bingo or raffle prize to a player based on a factual determination or a hearing by the attorney general.
9. Based on reasonable ground or written complaint, suspend, deny, or revoke an organization's local permit or an organization's, distributor's, or manufacturer's application or license for violation, by the organization, distributor, or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, or manufacturer, of this chapter or any gaming rule.
10. Impose a monetary fine on a licensed organization, organization that has a local permit, distributor, or manufacturer for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in place of a license suspension or revocation.
11. At any time within three years after any amount of fees, monetary fine, interest, penalty, or tax required to be paid pursuant to this chapter becomes due, bring a civil action to collect the amount due. However, if for any reason there is a change in adjusted gross income or tax liability by an amount which is in excess of twenty-five percent of the amount of adjusted gross income or tax liability originally reported on the tax return, any additional tax determined to be due may be assessed within six years after the due date of the tax return, or six years after the tax return was filed, whichever period expires later. An action may be brought although the person owing the fees or tax is not presently licensed.
12. Institute an action in any district court for declaratory or injunctive relief against a person, whether or not the person is a gaming licensee, as the attorney general deems necessary to prevent noncompliance with this chapter or gaming rules.
13. For good cause, require a licensed organization to use the attorney general's recordkeeping system for any or all games.

SECTION 14. AMENDMENT. Section 53-06.1-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

53-06.1-16. Violation of law or rule - Fraudulent scheme or technique to cheat or skim unlawful - Penalty.

1. Except as otherwise provided by this chapter, a person who knowingly makes a false statement on a request for record check form or in any application for a local permit, or license, or in any accompanying statement, knowingly signs a false record or report, or who fails to maintain sufficient books and records or adequate internal control to substantiate gross proceeds, prizes, cash profits, expenses, or disbursement of net proceeds, or who falsifies any books or records relating to any transaction involving the direct or indirect conduct of games, or who violates this chapter, any gaming rule, or of any term of a local permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or local permit issued to it and is ineligible to reapply for a gaming license or local permit for a period of time determined by the attorney general.
2. It is unlawful for a person playing or conducting a game, or otherwise:
 - a. To use bogus or counterfeit chips or pull tabs, or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
 - b. To employ or have on one's person any cheating device to facilitate cheating in any game, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.
 - c. To willfully use any fraudulent scheme or technique, including when a person directly or indirectly solicits, provides, or receives inside information of the status of a game of pull tabs for the benefit of any person.
 - d. To alter or counterfeit a site authorization, license, or North Dakota gaming stamp.
 - e. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or a gaming rule.

A person violating this subsection is guilty of a class A misdemeanor unless the total 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 pull tabs, twenty-one, or bingo, regardless of the amount gained, the offense is a class C felony.

Approved March 22, 1999
Filed March 22, 1999

STATE GOVERNMENT

CHAPTER 442

HOUSE BILL NO. 1415

(Representatives Grosz, Mahoney)

LEGISLATIVE ASSEMBLY MEMBER COMPENSATION

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation of members of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-20 of the 1997 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 one hundred eleven 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 fifty 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 be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty 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 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 two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. 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. The majority and minority leaders of the house and senate are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

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 March 31, 1999

Filed March 31, 1999

CHAPTER 443

HOUSE BILL NO. 1300

(Representatives Sandvig, Ekstrom, Kerzman)
(Senators Krauter, Kroeplin, Thompson)

PUBLIC EMPLOYEE LEGISLATIVE SERVICE

AN ACT to create and enact a new section to chapter 54-03 of the North Dakota Century Code, relating to authorizing governmental employers to allow public employees a leave of absence for service in the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

Service in the legislative assembly - Leave of absence from public employment.

The executive officer in charge of a state agency, department, or institution or the governing body of any political subdivision may grant a leave of absence from employment to a full-time employee of that governmental entity who is a member of the legislative assembly for service during any regular or special session of the legislative assembly. The leave of absence may be without pay, and the employer may reduce or eliminate the payment of any additional benefits normally due the employee while the employee is performing legislative service. A state agency, department, or institution or a political subdivision may not terminate the employment of an employee solely due to the fact that the employee is absent from employment as the result of service in the legislative assembly.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 444**SENATE BILL NO. 2209**
(Senator G. Nelson)**LEGISLATIVE ASSEMBLY ORGANIZATIONAL
SESSION**

AN ACT to amend and reenact section 54-03.1-02 of the North Dakota Century Code, relating to the date of convening of the organizational session of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

54-03.1-02. Time and place of meeting - Who must attend. In each even-numbered year on the first Tuesday after the first Monday in the month of December or on a date selected by the legislative council but not earlier than December first nor later than December fifteenth, all persons elected at the previous November general election as members of the succeeding legislative session, and members ~~of the senate~~ whose terms do not expire until the first day of December following the next November general election, shall meet in the state capitol in the city of Bismarck, or at such other place as may be designated, at the hour of nine a.m. for the purpose of conducting an organizational session. The legislative council shall call the organizational session and make such arrangements as may be necessary for its operation.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 445

SENATE BILL NO. 2116

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

LOBBYIST REPORTS AND POSTING

AN ACT to amend and reenact subsection 2 of section 54-05.1-03 and subsection 1 of section 54-05.1-04 of the North Dakota Century Code, relating to fees for late filing of lobbyist reports and posting of lists of lobbyists in the legislative chambers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-05.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Each person so registering to act as a lobbyist shall, on or before August first following the expiration of the registration period, file with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of twenty-five dollars or more expended on any single occasion during the legislative session or the interim, as the case may be, on any individual in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. ~~No~~ A state official or agency may not require reporting of lobbyist expenditures other than is required under this subsection. The secretary of state shall provide a prescribed form for reporting pursuant to this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:
 - a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars;
 - b. Thereafter, fifty dollars; and
 - c. If any currently registered lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.

SECTION 2. AMENDMENT. Subsection 1 of section 54-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. It is the duty and responsibility of the secretary of state:
 - a. To grant a certificate of registration and to design and furnish a distinctive lobbyist identification badge to any person registering under section 54-05.1-03 who supplies the information therein required.

- b. To revoke the certificate of registration of any person who has been convicted of violating any of the provisions of this chapter.
- c. To refer on ~~his~~ the secretary of state's own motion or on the verified complaint of any member of the legislative assembly or on the verified complaint of any state official, board, commission, department, or agency, or on the verified complaint of any other person, to the attorney general for investigation, the activities of any person who ~~he~~ the secretary of state has reason to believe has been acting as a lobbyist and who may be in violation of the requirements of this chapter.
- d. To make available upon request of any citizen expenditures by categories reported by registered lobbyists to have been expended on each individual in carrying out ~~his~~ that person's work.
- e. To supply a current list of registered lobbyists for each legislator upon request. ~~A current list of lobbyists must be posted in the legislative chambers during the legislative session.~~

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

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 446

HOUSE BILL NO. 1125

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

BIENNIAL AGENCY REPORTS

AN ACT to create and enact a new subsection to section 54-06-04 of the North Dakota Century Code, relating to biennial agency reports submitted to the secretary of state; and to amend and reenact subsection 4 of section 54-06-04 of the North Dakota Century Code, relating to biennial reports submitted to the state archivist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 54-06-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. All officers, departments, boards, commissions, and state institutions that submit reports covering their operations for the two preceding fiscal years to the governor and the secretary of state shall submit copies of their reports in the form and style, using the materials, and having the content prescribed under subsection 2 on or before the first day of December in each year after the regular session of the legislative assembly. If submitted, one copy of each report must be distributed to the following agencies:
 - a. Governor's office.
 - b. Legislative council.
 - c. Office of management and budget.
 - d. State law library.
 - e. The libraries of each state institution of higher education.
 - f. State library.
 - g. ~~Two copies to the state~~ State archivist for official and public use.

SECTION 2. A new subsection to section 54-06-04 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

All reports required under this section to be submitted to the secretary of state must be subsequently transmitted by the secretary of state to the state archivist for official and public use following their receipt and review by the secretary of state.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 447

HOUSE BILL NO. 1174

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE EMPLOYEE SUGGESTION INCENTIVE PROGRAM

AN ACT to amend and reenact section 54-06-24 of the North Dakota Century Code, relating to the state employee suggestion incentive program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-24 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-24. 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 section and review all recommendations or proposals for reduction of expenditures. The suggestion incentive committee may consider whether the recommendation or proposal to reduce expenditures within the employee's agency applies to any other state agency. The suggestion incentive committee shall notify the office of management and budget of any recommendation that affects an agency other than the employing agency. 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 employing state agency and any other state agency.
 - b. The suggestion incentive committee shall determine if:
 - (1) The recommendation or proposal has been previously submitted and rejected.
 - (2) The recommendation or proposal is beyond the reasonable expectations of job performance for the employee who made the suggestion.

- (3) Implementation of the recommendation or proposal is desirable and feasible.
- (3) (4) Implementation of the recommendation or proposal will continue to provide the quality of the services presently provided by the employing state agency and any other state agency affected by the recommendation or proposal.
- 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~~ twenty percent of any savings realized up to a maximum of ~~one~~ two 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.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 448**SENATE BILL NO. 2237**
(Senators DeMers, Wardner)
(Representatives Gorder, Winrich)**PUBLIC EMPLOYEE EMERGENCY SERVICES
VOLUNTEERS**

AN ACT to create and enact two new sections to chapter 54-06 of the North Dakota Century Code, relating to public employee emergency services volunteers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Emergency services volunteers - Leave. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency or the governing body of any political subdivision may grant a leave of absence to any full-time employee of that governmental entity who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing that employee to provide voluntary emergency services. A person on leave under this section is not deemed to be an employee of the governmental entity for the purposes of workers' compensation. The cumulative leave granted under this section may not exceed five working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

SECTION 2. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

Emergency service volunteers - Temporary leave for firefighters, emergency radio operators, medical service providers, and civil air patrol. The executive officer in charge of a state agency or the governing body of any political subdivision may grant temporary short-term leave with compensation to any full-time employee of that governmental entity for the purpose of allowing the employee to respond to an emergency call if the employee is a volunteer emergency medical service provider, firefighter, emergency radio operator, or a member of the civil air patrol.

Approved March 15, 1999
Filed March 16, 1999

CHAPTER 449**SENATE BILL NO. 2117**

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

STATE BOOK MARKING ELIMINATED

AN ACT to repeal section 54-09-03 of the North Dakota Century Code, relating to the marking and ownership of books delivered to officers of the state by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-09-03 of the North Dakota Century Code is repealed.

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 450

HOUSE BILL NO. 1356

(Representatives Clark, Haas, Herbel, Koppang, Pollert)
(Senator Flakoll)

SECRETARY OF STATE FEES

AN ACT to amend and reenact 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. Section 54-09-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For 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. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
 - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
 - b. A search of any record for which written verification of the facts of the search is required; and
 - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

6. For filing any paper not otherwise provided for, 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~~ A member of the legislative assembly; ~~and no~~ or a state or county officer may not be charged for any search relative to matters appertaining to duties of office, ~~nor~~ be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the person's official duties, or for filing any process, notice, or demand for service. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. 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 March 25, 1999
Filed March 25, 1999

CHAPTER 451

HOUSE BILL NO. 1066

(Representatives Sveen, Boucher, Gunter, Wentz)

INTERNATIONAL PEACE GARDEN AUDITS

AN ACT to amend and reenact section 54-10-01 of the North Dakota Century Code, relating to the authority of the state auditor to conduct audits of the international peace garden.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-01. Powers and duties of state auditor. The state auditor shall:

1. Be vested with the duties, powers, and responsibilities involved in performing the postaudit of all financial transactions of the state government, detecting and reporting any defaults, and determining that expenditures have been made in accordance with law and appropriation acts.
2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies, including occupational or professional boards provided for by law. The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and nongeneral fund moneys. The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit that board. Alternatively, an occupational or professional board may request the state auditor to do its audit, and if the state auditor agrees to do so, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.
3. Be vested with the authority to determine whether to audit the international peace garden at the request of the board of directors of the international peace garden.

- ~~4.~~ 4. Perform or provide for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and fiscal review committee. A performance audit must be done in accordance with generally accepted auditing standards applicable to performance audits.
- ~~4.~~ 5. For the audits and reviews the state auditor is authorized to perform or provide for under this section, the audit or review may be provided for by contract with a private certified or licensed public accountant or other qualified professional. If the state auditor determines that the audit or review will be done pursuant to contract, the state auditor, except for occupational or professional boards, shall execute the contract, and any executive branch agency, including higher education institutions, shall pay the fees of the contractor.
- ~~5.~~ 6. Be responsible for the above functions and report thereon to the governor and the secretary of state in accordance with section 54-06-04 or more often as circumstances may require.
- ~~6.~~ 7. Perform all other duties as prescribed by law.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 452**SENATE BILL NO. 2086**

(Judiciary Committee)

(At the request of the Attorney General)

**CHILD SEXUAL ABUSE INVESTIGATION TEAM
MEMBERSHIP**

AN ACT to amend and reenact section 54-12-04.2 of the North Dakota Century Code, relating to membership of the child sexual abuse investigation team.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-04.2 of the 1997 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; and an agent of the state bureau of criminal investigation; ~~and a licensed social worker 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 4, 1999

Filed March 5, 1999

CHAPTER 453**SENATE BILL NO. 2047**

(Legislative Council)
(Judiciary Committee)

ATTORNEY GENERAL CONTINGENT FEES

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to contingent fee arrangements for compensating special assistant attorneys general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Contingent fee arrangements. The attorney general may not appoint or allow to be employed a special assistant attorney general in a civil case in which the amount in controversy exceeds one hundred fifty thousand dollars and the special assistant attorney general is compensated by a contingent fee arrangement, unless the contingent fee arrangement is approved by the emergency commission. A state governmental entity may not contract for legal services that are compensated by a contingent fee arrangement, unless the entity receives an appointment from the attorney general for a special assistant attorney general for each case in which there is a contingent fee arrangement. Any proceeding or information used by the emergency commission under this section is not subject to sections 44-04-18 and 44-04-19, unless made public by order of the emergency commission.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 454

SENATE BILL NO. 2419

(Senators W. Stenehjem, G. Nelson, Nething)
(Representatives DeKrey, Devlin, Dorso)

ATTORNEY GENERAL FUND RECOVERY

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to funds recovered by the attorney general; and to amend and reenact section 54-12-18 of the North Dakota Century Code, relating to the attorney general refund fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Recovery of funds - Limitations. All funds recovered by the attorney general as a result of negotiated settlements or court proceedings must be deposited in a special fund in the state treasury and may be appropriated only by the legislative assembly, except when:

1. A specific fund or special account is otherwise designated by law; or
2. The options open to the attorney general leave no choice as to the disposition of the proceeds if the state is to recover funds in a multistate settlement.

SECTION 2. AMENDMENT. Section 54-12-18 of the 1997 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 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 protection or antitrust matter, 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 protection and antitrust division on behalf of specifically named 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 protection division; and
5. To pay the actual costs of background 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.

Approved April 16, 1999

Filed April 16, 1999

CHAPTER 455**HOUSE BILL NO. 1205**
(Representative Koppelman)
(Senator W. Stenehjem)**LAW ENFORCEMENT SEXUAL OFFENDER
INFORMATION ACCESSIBILITY**

AN ACT to provide for the accessibility of sexual offender and crimes against children information to law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Accessibility of registration information. The attorney general shall provide to a law enforcement dispatch center access to registration information on individuals required to register under section 12.1-32-15 through any feasible electronic means that includes direct access to a computerized registration information data base. The attorney general shall provide the information in a form that is referenced by driver's license number or number plate characters. The department of transportation shall provide the necessary information to the attorney general in any feasible form requested by the attorney general. The attorney general may require the cooperation of the state radio broadcasting system to provide the access required by this section.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 456

SENATE BILL NO. 2062

(Senators Cook, T. Mathern, Wardner)
(Representatives Devlin, Glasheim, Timm)

HOUSING AUTHORITY AID ACCEPTANCE

AN ACT 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 a local housing authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-07.6 of the 1997 Supplement to 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 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 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 Upon submission of written notice to the industrial commission, a housing authority established under chapter 23-11 which elects may elect to exercise the authority granted to the industrial commission under this section preempts and preempt the industrial commission from acting with regard to tenant-based housing certificates and vouchers or successor programs 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 August 1, 1993. 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 August 1, 1993, 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 or may elect to enter an agreement with the industrial commission to accept, exercise, and administer any housing aid or assistance upon the terms and conditions agreed upon by the parties. For the purposes of this section, "area of operation" includes any political subdivision that lawfully contracts with the local housing authority to act as a local housing authority for that political subdivision and any political subdivision that has its certificates and vouchers or successor programs assigned by the industrial commission to the local housing authority under an agreement between the local housing authority and the industrial commission.

Approved March 3, 1999
Filed March 4, 1999

CHAPTER 457**HOUSE BILL NO. 1114**

(Political Subdivisions Committee)
(At the request of the Industrial Commission)

**INDUSTRIAL COMMISSION RIVERDALE GRANT
AUTHORITY REPEAL**

AN ACT to repeal sections 54-17-21, 54-17-22, and 54-17-23 of the North Dakota Century Code, relating to planning grant authority for the industrial commission for the city of Riverdale.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 54-17-21 and 54-17-23 of the North Dakota Century Code and section 54-17-22 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 458

SENATE BILL NO. 2312

(Senators St. Aubyn, Holmberg, W. Stenehjem)
(Representatives Delmore, Nottestad, Poolman)

STATE FACILITY ENERGY IMPROVEMENT PROGRAM

AN ACT to create and enact a new subsection to section 54-17.2-03, a new subsection to section 54-44.5-04, and a new section to chapter 54-44.5 of the North Dakota Century Code, relating to powers of the North Dakota building authority and the office of governmental assistance to implement a state facility energy improvement program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-17.2-03 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, issue evidences of indebtedness to implement the state facility energy improvement program under section 3 of this Act.

²⁸³ **SECTION 2.** A new subsection to section 54-44.5-04 of the North Dakota Century Code is created and enacted as follows:

Implement a state facility energy improvement program.

SECTION 3. A new section to chapter 54-44.5 of the North Dakota Century Code is created and enacted as follows:

State facility energy improvement program. By August fifteenth of each odd-numbered year, the office shall inform all state agencies and institutions of the state facility energy improvement program. The office shall work with interested agencies and institutions to identify potential state facility energy improvement programs and select facilities for indepth energy audits designed to provide information on project costs along with estimated energy savings from implementation of those projects. The office shall notify affected utilities to discuss the potential impact on the utility and its customers of the proposed energy savings or conservation project. Upon completion of the energy audit, the office, in consultation with the interested agencies or institutions, shall submit a list of proposed projects to the governor, accompanied with the estimated cost of each project and energy savings resulting from the projects. The office shall submit a report listing the proposed energy savings or conservation projects to the governor by September first of each even-numbered year. The governor shall include the proposed energy efficiency or conservation projects in the biennial budget. The governor shall make available to the legislative assembly a report prepared by the office on each energy efficiency or conservation project, a description of the

²⁸³ Section 54-44.5-04 was also amended by section 8 of Senate Bill No. 2179, chapter 475.

improvements to be financed, the estimated cost of each project, the total cost of the program, and the proposed method of financing the program. If the office proposes that evidences of indebtedness be issued to finance the energy efficiency or conservation improvements, the office shall provide an assurance that energy savings resulting from the improvements will be sufficient to equal or exceed the annual debt service of the evidences of indebtedness. In determining whether the energy savings will be sufficient to equal or exceed the annual debt service, the office, in consultation with the interested agencies or institutions, may analyze state agency utility data to identify potential projects; perform detailed energy audits of state facilities, including contracting for audits if necessary; and provide training to facility maintenance staff to ensure that sufficient cost-savings are realized from projects to cover the debt service. The governor shall include in the executive budget recommendation for each state agency or institution participating in the state facility energy improvement program an estimate of the annual energy cost-savings expected for that agency, and, if needed, a projection of the debt service on program bonds that is apportioned to that agency. The executive budget recommendation must then reduce the current level of utility appropriations by the amount needed for debt service retirement and recommend an appropriation of that amount to the state building authority. Any appropriation of an amount needed for debt service retirement to the state building authority is not subject to the limitation contained in section 54-17.2-23.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 459

HOUSE BILL NO. 1115

(Finance and Taxation Committee)

(At the request of the Industrial Commission)

STATE MILL AND ELEVATOR BONDS

AN ACT to create and enact two new sections to chapter 54-18 of the North Dakota Century Code, relating to the issuance of bonds by the industrial commission for the mill and elevator association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 54-18 of the North Dakota Century Code are created and enacted as follows:

Bonds of association. In order to fund the association's buildings and enterprises, related structures, parking facilities, equipment, improvements, real and personal property, and any other appurtenances, fixtures, or facilities necessary or convenient for the use or disposition of the association's buildings and enterprises, the industrial commission is authorized to issue, sell, and refund revenue bonds or evidences of indebtedness of the state. The principal and interest on the bonds are payable only from revenues of the association. The bonds may not constitute a debt of the state of North Dakota and must contain a statement to that effect on their face. The bonds may be sold at public or private sale, must mature not more than twenty years from their date or dates, and must contain such terms, conditions, and provisions as the industrial commission determines. The industrial commission may capitalize from bond proceeds all expenses incidental to the issuance of the bonds including any reserves for the payment of bonds, costs of issuance, interest during construction, and costs of any credit enhancement for the bonds including the costs of any letter of credit, bond insurance, surety bond, or liquidity facility. Bonds may not be issued under this section until the legislative assembly by law has authorized the specific project and declared the project to be in the public interest. The bonds and any interest thereon are not subject to taxation by the state or by any political subdivision of the state. Bonds issued under this section may be acquired and held by banks and by savings and loan associations of the state as well as by all public trust funds and fiduciaries. The industrial commission may make and enter into and enforce all contracts or agreements necessary, convenient, or desirable for the purposes of the commission or pertaining to any purchase or sale of the bonds or to the performance of its duties and the execution or carrying out of any of its powers under this section.

Mill association renovation project. The industrial commission is authorized to arrange for the funding of a mill association renovation project which is hereby declared to be in the public interest through the issuance of evidences of indebtedness during the biennium beginning July 1, 1999, and ending June 30, 2001, with the construction costs not exceeding nineteen million five hundred thousand dollars. The authority of the commission to issue evidences of indebtedness ends

June 30, 2001, but the industrial commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into before that date.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 460**HOUSE BILL NO. 1116**

(Agriculture Committee)

(At the request of the Industrial Commission)

**MILL AND ELEVATOR INFORMATION
CONFIDENTIALITY REPEAL**

AN ACT to repeal section 54-18-04.2 of the North Dakota Century Code, relating to confidentiality of North Dakota mill and elevator information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-18-04.2 of the North Dakota Century Code is repealed.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 461

HOUSE BILL NO. 1475 (Representative Dalrymple) (Senator Nething)

TOBACCO SETTLEMENT FUND ALLOCATION

AN ACT to provide for allocation of funds from settlements with tobacco product manufacturers; and to create and enact a new subsection to section 54-44-04 of the North Dakota Century Code, relating to monitoring tobacco product manufacturers settlement funds by the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Tobacco settlement trust fund - Interest on fund - Uses. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under sections IX (payments) and XI (calculation and disbursement of payments) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 (Civil No. 98-3778). All moneys received by the state pursuant to the judgment and all moneys received by the state for enforcement of the judgment must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund must be allocated as follows:

1. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund.
2. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.
3. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

Notwithstanding the provisions of this section, during each biennium transfers that would be made to the common schools trust fund under subsection 2 must instead be transferred to the water development trust fund until the state water commission certifies to the state treasurer that deposits in the water development trust fund during that biennium are sufficient to pay the principal and interest for that biennium on bonds authorized under section 61-02.1-01. When that certification is received, the state treasurer shall determine the amount deposited in the water development trust fund during that biennium and transfers that would be made to the water development trust fund under subsection 3 must instead be transferred to the common schools trust fund until deposits in the common schools

trust fund during that biennium are equal to the amount deposited in the water development trust fund during that biennium or until the end of the biennium, whichever occurs first.

Transfers to the funds under this section must be made within thirty days of receipt by the tobacco settlement trust fund.

SECTION 2. A new subsection to section 54-44-04 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Shall account for and monitor all funds received by the state from any tobacco settlement dollars described in section 1 of this Act and all associated settlements and related funds and shall report to the budget section of the legislative council on the status of such funds, settlements, offsets, and net resulting revenues and any other related information the budget section requires.

Approved April 22, 1999

Filed April 22, 1999

CHAPTER 462

HOUSE BILL NO. 1141

(Industry, Business and Labor Committee)

(At the request of the Department of Economic Development and Finance)

DEPARTMENT OF ECONOMIC DEVELOPMENT AND FINANCE STRUCTURE AND DUTIES

AN ACT to amend and reenact section 54-34.3-03 and subsection 8 of section 54-34.3-04 of the North Dakota Century Code, relating to the structure and duties of the department of economic development and finance; and to repeal section 54-34-06.1 of the North Dakota Century Code, relating to dissemination of in-state manufacturer product listings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.3-03 of the 1997 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; and
2. ~~A division of science and technology; and~~
3. Other divisions that the director organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the department.

SECTION 2. AMENDMENT. Subsection 8 of section 54-34.3-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. Report at least annually to an interim committee designated by the legislative council on ~~loan performance and performance of the department of economic development and finance, including evaluations of the division of finance, the division of marketing and technical assistance, and the division of science and technology. A report must include a comparison of dollars spent to the jobs created of all programs administered or supervised by the director and a review of the timeliness of the loan processing practices including a log of activities from application to final determination of all divisions of the department of economic development and finance. The report must include the amount of success and satisfaction the department of economic development and finance has in meeting business-client, economic-developer, and community-client needs and expectations. The report must also include a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the director; and~~

SECTION 3. REPEAL. Section 54-34-06.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 463**SENATE BILL NO. 2436**

(Senator G. Nelson)
(Representative Carlson)

LEGISLATIVE COUNCIL COMPOSITION

AN ACT to amend and reenact section 54-35-01 of the North Dakota Century Code, relating to the composition of the North Dakota legislative council; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-01. Council - Created - Members - Vacancy - Terms. The North Dakota legislative council, ~~hereinafter in this chapter~~ referred to as the legislative council or the council, consists of the majority and minority leaders of the house and of the senate plus ~~five~~ six senators and ~~six~~ seven representatives chosen biennially before the close of each regular legislative session. In the house of representatives the speaker of the house shall appoint ~~as to the council members three~~ four members recommended by the majority leader ~~of each political faction~~ and three members recommended by the minority leader, except that the speaker must by virtue of office be one of the ~~three~~ four members appointed from the speaker's faction. In the senate the lieutenant governor shall appoint ~~as to the council members three~~ four members recommended by the majority leader and two members recommended by the minority leader. Any vacancy occurring when the legislative assembly is not in session must be filled by the selection of another member of the legislative assembly belonging to the same faction as the member originally appointed, the selection to be made by the remaining senate or house members of the council, depending upon which body has the vacancy. Each senator and each representative chosen to serve on the council shall serve until a new council has been selected at the next regular legislative session; provided, however, that no senator, not a holdover, who is not reelected to the senate, and no representative, who is not reelected to the house of representatives, may serve as a member of the council beyond the closing day of the term to which elected. Any vacancy occurring because any member of the council is not reelected must be filled for the period from the beginning of the session until a new council is selected, in the same manner as the original council is selected.

SECTION 2. EFFECTIVE DATE. This Act becomes effective January 1, 2001.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 464**SENATE BILL NO. 2208**

(Senator G. Nelson)
(Representative Dorso)

**EMPLOYEE BENEFITS PROGRAMS COMMITTEE
RECOMMENDATIONS**

AN ACT to amend and reenact subsection 1 of section 54-35-02.4 of the North Dakota Century Code, relating to recommendations of the employee benefits programs committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35-02.4 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The employee benefits programs committee shall consider and report on those legislative measures and proposals over which it takes jurisdiction and which affect, actuarially or otherwise, the retirement programs of state employees or employees of any political subdivision, and health and retiree health plans of state employees or employees of any political subdivision. The committee shall make a thorough review of any measure or proposal which it takes under its jurisdiction, including an actuarial review. The committee shall take jurisdiction over any measure or proposal that authorizes an automatic increase or other change in benefits beyond the ensuing biennium which would not require legislative approval. The committee must include in the report of the committee a statement that the proposal would allow future changes without legislative involvement. The committee shall report its findings and recommendations, along with any necessary legislation, to the legislative council and to the legislative assembly.

Approved March 15, 1999
Filed March 16, 1999

CHAPTER 465**SENATE BILL NO. 2055**

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE COUNCIL MEETING COMPENSATION

AN ACT to amend and reenact subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to compensation paid to members of the legislative assembly for attending sessions of the legislative council and its committees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council must be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of ~~sixty-two~~ seventy-five dollars ~~and fifty cents~~ per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 466

SENATE BILL NO. 2044

(Legislative Council)
(Information Technology Committee)

LEGISLATIVE COUNCIL INFORMATION TECHNOLOGY COMMITTEE

AN ACT to create and enact three new sections to chapter 54-35 of the North Dakota Century Code, relating to the legislative council information technology committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Information technology committee - Appointment. The legislative council, during each biennium, shall appoint an information technology committee in the same manner as the council appoints other interim committees. The council shall appoint four members of the house of representatives and three members of the senate to the committee. The chief information officer of the state is an ex officio, nonvoting member of the committee. The council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

SECTION 2. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Information technology committee - Powers and duties. The information technology committee has continuing existence and may meet and conduct its business during the legislative session and in the interim between sessions. The committee shall:

1. Meet at least once each calendar quarter.
2. Receive a report from the chief information officer of the state at each meeting.
3. Review the business plan of the information technology department.
4. Address macro-level questions relating to the information technology department.
5. Review the activities of the information technology department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Conduct studies of information technology efficiency and security.

9. Make recommendations regarding established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. Review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of two hundred fifty thousand dollars or more in one biennium or a total cost of five hundred thousand dollars or more.
11. Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.

SECTION 3. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Information technology project quality assurance - Information technology committee review - Suspension of funds. The information technology committee may review any information technology project or information technology plan. If the committee determines that the project or plan is at risk of failing to achieve its intended results, the committee may recommend to the office of management and budget the suspension of the expenditure of moneys appropriated for a project or plan. The office of management and budget may suspend the expenditure authority if the office of management and budget agrees with the recommendation of the committee.

Approved April 20, 1999

Filed April 20, 1999

CHAPTER 467**SENATE BILL NO. 2389**

(Senators St. Aubyn, Fischer, B. Stenehjem)
(Representatives Hawken, Keiser, Timm)

**ELECTRIC INDUSTRY COMPETITION COMMITTEE
TERRITORIAL INTEGRITY STUDY**

AN ACT to create and enact a new subsection to section 54-35-18.2 and a new section to chapter 54-35 of the North Dakota Century Code, relating to study areas of the electric industry competition committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-35-18.2 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

Study chapter 49-03 and other relevant statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality. The study must specifically address and include the criteria used by the public service commission under chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances, if any, under chapter 49-03 and other relevant statutes under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served totally or primarily by a public utility.

SECTION 2. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Electric industry competition committee - Recommendations. Notwithstanding section 54-35-18.2, the electric industry competition committee shall submit proposed legislation, if necessary, as a result of the study conducted pursuant to section 1 of this Act to the fifty-seventh legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2001, and after that date is ineffective.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 468**SENATE BILL NO. 2028**

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

EFFICIENCY PLANNING GRANTS ELIMINATED

AN ACT to repeal section 54-35.2-02.1 of the North Dakota Century Code, relating to local government efficiency planning grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 54-35.2-02.1 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 469

SENATE BILL NO. 2294

(Senators DeMers, Bercier)
(Representatives D. Johnson, Lemieux)

STATE-TRIBAL AGREEMENTS

AN ACT to amend and reenact sections 54-40.2-01, 54-40.2-02, and 54-40.2-09 of the North Dakota Century Code, relating to agreements between Indian tribes and the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

54-40.2-01. Definitions. In this chapter:

1. "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of North Dakota.
2. "Secretary" means the secretary of interior of the United States.
3. "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. The term does not include any entity owned, organized, or chartered by a tribe which exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

SECTION 2. AMENDMENT. Section 54-40.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.2-02. Authorization to enter agreements - General contents. Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any disputes, in accordance with this chapter or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement. The Indian affairs commission may propose agreements entered into pursuant to this chapter and may assist, at the request of any tribe affected by such an agreement, in the negotiation and development of such agreements. This chapter does not apply to agreements entered into under section 24-02-02.3 and chapter 54-38 or agreements entered with one or more tribal governments pursuant to a state or federally funded program or other activity, including any publicly announced offer of a grant, loan, request for proposal, bid, or other contract originating with a public agency, for which the tribal government is otherwise eligible under federal, state, or local law.

SECTION 3. AMENDMENT. Section 54-40.2-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-40.2-09. Validity of existing agreements. This chapter does not affect the validity of any agreement entered into between a tribe and a public agency ~~prior to July 3, 1994~~ before August 1, 1999.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 470**SENATE BILL NO. 2111**

(Appropriations Committee)

(At the request of the Office of Management and Budget)

**STATE PERSONNEL TRAINING AND DEVELOPMENT
OPERATING FUND**

AN ACT to amend and reenact subsection 4 of section 54-44-11 of the North Dakota Century Code, relating to a continuing appropriation for the state personnel training and development operating fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁴ **SECTION 1. AMENDMENT.** Subsection 4 of section 54-44-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The office of management and budget shall establish a state personnel training and development operating fund to be used for the coordination of employee training and career development data, supplies, equipment, and services and for providing or arranging necessary training and development programs to state departments and agencies. Funds in the state personnel training and development operating fund are appropriated on a continuing basis to the office of management and budget and may be spent for the purposes identified in this subsection. Any surplus in this fund in excess of twenty-five thousand dollars on June thirtieth of each year must be transferred to the state general fund.

Approved March 5, 1999

Filed March 5, 1999

²⁸⁴ Section 54-44-11 was also amended by section 22 of Senate Bill No. 2043, chapter 483.

CHAPTER 471**HOUSE BILL NO. 1046**

(Legislative Council)
(Legislative Audit and Fiscal Review Committee)

OMB BUDGET DATA

AN ACT to amend and reenact subsection 8 of section 54-44.1-06 of the North Dakota Century Code, relating to the contents of budget data prepared by the director of the budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 54-44.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A list of every individual ~~leased~~ asset or service, excluding real estate, with a value of at least fifty thousand dollars and every group of ~~leased assets and services~~ comprising a single system with a combined value of at least fifty thousand dollars acquired through a capital or operating lease arrangement or debt financing arrangement by a state agency or institution. The list must include ~~leased~~ assets or services acquired in the current biennium and anticipated ~~leased~~ assets or services to be acquired in the next biennium.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 472

HOUSE BILL NO. 1171

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

PERSONNEL BOARD MEMBERSHIP, VOTING, AND COMPLAINTS

AN ACT to amend and reenact sections 54-44.3-03, 54-44.3-12.2, 54-44.3-15, and 54-44.3-16 of the North Dakota Century Code, relating to membership and voting on the state personnel board, employee complaints, certification of payroll by the central personnel division director, and agency personnel officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.3-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-03. State personnel board - Composition - Terms - Vacancies - Qualifications.

1. The state personnel board is composed of the director, who must be the chairman of the board; ~~a member appointed by the board of higher education;~~ one member appointed by the governor; ~~and two members elected by employees classified under sections 54-44.3-19 and 54-44.3-20;~~ and one member with a professional human resource background appointed by the governor.
2. The term of ~~the each~~ member of the board ~~appointed by the governor and the respective terms of the members of the board elected by classified employees,~~ except the director, must be for six years. ~~However, the member of the board appointed by the governor in 1995 shall serve for a period of six years. Thereafter, all appointments and elections to the personnel board must be for six years' duration. The director's term coincides with employment as director.~~
3. Any permanent vacancy in office must be filled for the unexpired term in the same manner as the selection of the person vacating the office. ~~However, if a board member voluntarily withdraws from deliberation and voting on an appeal where there may be a possible conflict of interest, the vacancy will be filled temporarily in the same manner as the selection of the person vacating the office. When a temporary vacancy involves a member of the board elected by classified employees, the automatic substitute must be the candidate that received the second highest number of votes in the election that elected the board member. Temporary board members will be used only in situations when a permanent board member voluntarily vacates the position due to a possible conflict of interest.~~
4. ~~3.~~ Each member of the board ~~appointed by the governor~~ must be a resident of the state for at least sixty days and must be known to be in

sympathy with the application of merit principles to public employment. ~~Each member of the board elected by classified employees must be a resident of the state for at least sixty days and must be known to be in sympathy with the application of merit principles to public employment. No member of the board appointed by the governor or elected by classified employees may have held a position in a political party within four years immediately preceding the member's appointment or election to the board, and those members of the board elected by classified employees must be full-time employees in good standing of the classified service.~~

SECTION 2. AMENDMENT. Section 54-44.3-12.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the ~~office of administrative hearings~~ hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter 23-32 unless an employee of one of those two agencies is involved in the grievance.

SECTION 3. AMENDMENT. Section 54-44.3-15 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-15. Payrolls must be certified by director before payment can be made Payment disapproved by director. ~~No state disbursing or auditing officer~~ The director may make or approve or take any part in making or approving any ~~disapprove the payment for personal service to~~ for any person holding a position in the classified service, except a person appointed to a position for the duration of an emergency, unless if the director or the director's authorized agent has certified determines that the person named therein has not been classified and is not imminently to receive classification in accordance with the provisions of this chapter and the rules and orders thereunder and or that the rate of pay is legal not authorized.

SECTION 4. AMENDMENT. Section 54-44.3-16 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-16. Agency personnel officers. The elected or appointed chief officer of each agency or department of the service shall designate a staff employee to serve as personnel officer for that division of the service to assist ~~him~~ the chief officer in ~~his~~ that person's duty to administer personnel responsibilities specified in this chapter and by the personnel rules ~~and regulations~~. The designated personnel officer of each agency or department shall certify to the agency elected or appointed chief officer that each person holding a position in the classified service authorized for payment through payroll has been classified in accordance with the provisions of this chapter and the rules and orders under this chapter and that the rate of pay is within established current salary ranges or excepted from the ranges by written authorization by the director.

Approved April 14, 1999

Filed April 14, 1999

CHAPTER 473

SENATE BILL NO. 2291

(Senators W. Stenehjem, Kringstad, Robinson)
(Representatives Aarsvold, Bernstein, Martinson)

HIGHER EDUCATION TEACHING STAFF CLASSIFICATION EXEMPTION

AN ACT to amend and reenact section 54-44.3-20 of the North Dakota Century Code, relating to exemption of the teaching staff of institutions of higher education from the state classified service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁵ **SECTION 1. AMENDMENT.** Section 54-44.3-20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-20. Categories of positions in the state service. All positions in the state service are included in the classified service except:

1. Each official elected by popular vote and each person appointed to fill vacancies in an elective office, one principal assistant, and one private secretary.
2. Members of boards and commissions required by law.
3. Administrative heads of departments required by law, other than the superintendent of the school for the blind, the superintendent of the school for the deaf, and the state librarian.
4. Officers and employees of the legislative branch of government.
5. Members of the judicial branch of government of the state of North Dakota and their employees and jurors.
6. Persons temporarily employed in a professional or scientific capacity as consultants or to conduct a temporary and special inquiry, investigation, or examination for the legislative branch of government or a department of the state government.
7. ~~Officers and members of the teaching staff of universities and other institutions of higher education.~~
8. Positions deemed to be inappropriate to the classified service due to the special nature of the position as determined by the division and approved by the board.

²⁸⁵ Section 54-44.3-20 was also amended by section 12 of House Bill No. 1019, chapter 19, and section 45 of House Bill No. 1188, chapter 162.

9. ~~8.~~ ~~The classified employees at~~ Employees of the institutions of higher education under the control of the state board of higher education; ~~until July 1, 1976.~~
- ~~40.~~ 9. Members and employees of occupational and professional boards.
- ~~44.~~ 10. Officers and employees of the North Dakota mill and elevator association.
- ~~42.~~ 11. The director of the committee on employment of people with disabilities of the department of human services.
- ~~43.~~ 12. Positions referred to under law as serving at the pleasure of or at the will of the appointing authority.
- ~~44.~~ 13. Certificated teachers engaged in teaching at the North Dakota youth correctional center, the school for the blind, and the school for the deaf.
- ~~45.~~ 14. Officers and employees of the workers compensation bureau.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 474

HOUSE BILL NO. 1170

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE PURCHASING AND PRINTING

AN ACT to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to approved vendors under state purchasing laws; to amend and reenact sections 12-48-07, 24-03-14, 46-01-02, 46-02-01, 46-02-09, 46-05-03, 54-23.2-02, 54-24-09, 54-44-04.5, 54-44-04.6, subsection 3 of section 54-44.2-02, subsections 4, 5, and 8 of section 54-44.4-02, sections 54-44.4-03, 54-44.4-05, 54-44.4-07, and 54-44.4-08 of the North Dakota Century Code, relating to state purchasing and printing practices and the responsibilities of the office of management and budget; to repeal section 54-44-09 of the North Dakota Century Code, relating to the requirement that state purchases comply with United States bureau of standards; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is amended and reenacted as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of the division of adult services, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary. Procurement must be made by the warden according to chapter 54-44.4 and rules adopted under that chapter.

SECTION 2. AMENDMENT. Section 24-03-14 of the North Dakota Century Code is amended and reenacted as follows:

24-03-14. Authority to acquire buildings for equipment. ~~The office of management and budget has the authority to acquire buildings for equipment under its purchasing powers; however, the office of management and budget may delegate such authority to the director, and in such instances the director has authority to construct, rent, or purchase for the state the necessary land and buildings for the storage and housing of road materials, road machinery, equipment, and tools.~~

SECTION 3. AMENDMENT. Section 46-01-02 of the North Dakota Century Code is amended and reenacted as follows:

46-01-02. Printing duties of office of management and budget. The office of management and budget shall:

1. Bid all printing requisitions as requested and let all contracts.
2. ~~Examine all work to determine if it conforms to the contract.~~
3. ~~Examine all accounts let to contract to determine if the charges are correct.~~

4. Determine the price of any legal notice or publication when requested by any state agency or department, or by any political subdivision. Its decision on the proper fee for ~~such~~ the publication is binding and final, subject to review by the courts.

SECTION 4. AMENDMENT. Section 46-02-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-01. Printing and binding - Duties of the office of management and budget. The office of management and budget shall have charge of all the printing required to be done for ~~the several departments of the~~ all state government agencies except as otherwise provided by section 46-02-09. ~~No printing required by any state officer as provided in this chapter may be paid for unless it was authorized by the legislative assembly or by the office of management and budget for seven hundred fifty dollars and over.~~

SECTION 5. AMENDMENT. Section 46-02-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-09. Sixth-class items - When bids or quotations required. All work on sixth-class items amounting to seven hundred fifty dollars or over, not done by the central duplicating service of the office of management and budget or by departments, institutions, or state offices, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than seven hundred fifty dollars may be given by the department head to a printer selected by the department head and accompanied by a purchase order ~~of which one copy must be sent to the office of management and budget.~~ Where If practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget.

SECTION 6. AMENDMENT. Section 46-05-03 of the North Dakota Century Code is amended and reenacted as follows:

46-05-03. Legal notices - Fees. To effect uniformity, the office of management and budget may compute a standard price on those legal notices which are widely published such as ballots, insurance statements, and official proclamations. All newspapers must use the rates, type size, and column width as shown on its legal notice rate certification issued by ~~the state printing agent~~ of the office of management and budget. Certifications must be issued within fifteen days after samples are submitted.

The office of management and budget shall annually review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general economy, and those adjustments become effective on each July first following the review. These annual changes may be percentage increases or decreases in the base rates, and they may incorporate revisions in the base rate structure. Whenever the office of management and budget considers an adjustment in the legal publication rates contained herein, it shall consult with representatives of the daily and weekly newspaper industry of the state and with representatives of state and local units of government.

SECTION 7. AMENDMENT. Section 54-23.2-02 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-02. State radio broadcasting system. The director may purchase the necessary apparatus and equipment to construct or establish a radio broadcasting system for the state of North Dakota, which system must be used solely for the transmission of state business and information. The director is further authorized and empowered to purchase shortwave radio receiving and transmitting sets in ~~such~~ quantities as may be most economical and to equip with shortwave radio receiving and transmitting sets all state-owned cars used in connection with law enforcement, ~~such~~ road maintainers as ~~he~~ the director shall determine advisable, the state penitentiary, and ~~such~~ any other places as may furnish the speedy transmission of messages and state information. Purchases must be made by the director according to chapter 54-44.4 and rules adopted thereunder. The director is charged with the operation and maintenance of said system.

SECTION 8. AMENDMENT. Section 54-24-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24-09. Distribution of certain state publications for certain libraries required. ~~The state purchasing and printing agent~~ office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the ~~state purchasing and printing agent~~ office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical board, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota libraries may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

SECTION 9. AMENDMENT. Section 54-44-04.5 of the North Dakota Century Code is amended and reenacted as follows:

54-44-04.5. Federal surplus property - Office of management and budget responsible for distribution - Powers and duties of director.

1. The office of management and budget is responsible for the fair and equitable distribution, through donation, of all federal surplus property transferred to the state in accordance with the Federal Property and Administrative Services Act of 1949, as amended [63 Stat. 378; 40 U.S.C. 484 (j)], hereinafter referred to as the federal Act.
2. The director of the office of management and budget, or ~~such subordinate officer~~ as the director shall designate director's designee:
 - a. May receive, investigate, and make recommendations on applications for federal surplus property available under the federal Act.
 - b. May acquire any federal surplus property transferred to the state under the federal Act.
 - c. May distribute any federal surplus property pursuant to the federal Act to:
 - (1) Any public agency for use in carrying out or promoting for the residents of a given political subdivision one or more public purposes; or
 - (2) Nonprofit educational institutions, public health institutions, or organizations which are exempt from taxation under section 501 of the federal Internal Revenue Code, for purposes of education or public health or research for those purposes.
 - d. May store the federal surplus property.
 - e. Shall develop, submit, and implement a state plan of operation for distribution of federal surplus property and comply with the federal Act and rules and regulations adopted thereunder. Provided, the director may continue the state plan of operation developed by the department of public instruction.
 - f. May cooperate and enter into agreements with other surplus property agencies and federal agencies to screen and acquire surplus property and exchange property, facilities, personnel, and services.
 - g. May provide information and assistance for acquiring federal surplus property to entities listed in subdivision c.
 - h. May assess and collect service charges from participating recipients to cover direct and reasonable cost of services under this section. The service charges must be deposited with the state treasurer in a surplus property special fund and used pursuant to the federal Act. The state treasurer shall credit all interest earned to the fund if the director requests the state treasurer to invest portions of the fund.

- i. Adopt rules and take other action necessary to distribute federal surplus property pursuant to the federal Act.
3. The director of the office of management and budget or the director's designee may purchase available federal property under applicable federal property management regulations for distribution according to this section.

²⁸⁶ **SECTION 10. AMENDMENT.** Section 54-44-04.6 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-04.6. State surplus property - Department heads to inform director - Disposition of property - Proceeds - Exchange of property.

1. The person in charge of any department, agency, or institution of the state shall inform the director of the office of management and budget or the director's designee whenever that department, agency, or institution possesses property surplus to its needs, whether originally obtained with state or other funds.
2. Political subdivisions may provide their surplus property to the office of management and budget for disposition according to subsections 3, 4, and 5.
3. ~~State surplus~~ Surplus property must be transferred at fair market value to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under the Federal Property Administrative Services Act of 1949, as amended. Eligible organizations must be notified of the availability of property on a regular basis.
- ~~3.~~ 4. If not disposed of under subsection ~~2~~ 3, then by sale on sealed bids or at public auction to the highest and best bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
4. 5. All proceeds received from the transfer or sale of ~~state~~ surplus property must be deposited into the state or political subdivision fund from which the property was originally purchased, less administrative expenses.
5. ~~No department, agency, or institution may exchange items as part of a purchase price of new items until a detailed statement of the value of the items to be exchanged and request for approval have been submitted to the director of the office of management and budget. The director shall approve the exchange only if the director has determined that the item has been valued at fair value.~~

²⁸⁶ Section 54-44-04.6 was also amended by section 35 of Senate Bill No. 2015, chapter 37.

SECTION 11. AMENDMENT. Subsection 3 of section 54-44.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Have the authority to purchase or lease equipment or replace, including by trade or resale, present equipment as may be necessary to carry out this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, shall submit to the information services division and the legislative council, or its designee, in accordance with guidelines established by the division, a written request for the lease, purchase, or other contractual acquisition of information technology services or equipment. The information services division shall review requests for conformance with the requesting organization's strategic plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the information services division may disapprove the request or require justification for the departure from the strategic plan or statewide policy or standard. The division shall inform the legislative council, or its designee, of any requests disapproved or additional justification received relating to a request. All acquisitions made by the division under this section must be done according to chapter 54-44.4 and rules adopted under that chapter.

SECTION 12. AMENDMENT. Subsections 4, 5, and 8 of section 54-44.4-02 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. Department of transportation materials, equipment, and supplies in accordance with ~~the provisions of chapters 24-02 and 24-03~~ section 24-02-16.
5. Professional services ~~pursuant to written contract,~~ unless the office of management and budget agrees to procure professional services in response to an agency's written request.
8. Such specific items or items costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget. The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card.

SECTION 13. AMENDMENT. Section 54-44.4-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-03. Director of the office of management and budget may delegate purchasing authority. The director of the office of management and budget or the director's designee may delegate to state agencies and institutions the authority to make purchases of items not otherwise exempted by law. Any delegation of purchasing authority must be in writing and must specify what may be purchased by the agency or institution and the duration of the delegation.

SECTION 14. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Approved vendors.

1. Every person or business entity that desires to bid or submit a proposal on contracts awarded under this chapter must be an approved vendor in order to receive a request for bids or proposals. Unless waived by the director of the office of management and budget, or the director's designee, a bid or proposal may not be considered under this section from any vendor that is not approved.
2. To become an approved vendor a person or business entity shall file an application with the office of management and budget. The application must contain information requested by the office of management and budget, including business and persons' names, phone numbers, addresses, federal tax identification numbers, type of business organization, other permits or licenses issued by this state and related numbers, the nature of the business and the products sold, the types of bids or proposals in which the applicant is interested, references, and other business information. The application must also contain a statement appointing the secretary of state as the applicant's agent for service of process pursuant to subsection 3. The application must be signed and certified by an owner, partner, or company officer authorized by company bylaws or other organizational document to bind the company. The office of management and budget may require proof of the signing person's authority by certified copy of appropriate company documents.
3. At the time of filing the application to become an approved vendor, the applicant, if organized as a corporation, limited liability company, limited liability partnership, or limited partnership, must be properly and currently registered with the secretary of state according to its type of business organization as a corporation under chapter 10-19.1, a limited liability company under chapter 10-32, a limited liability partnership under chapter 45-22, or a limited partnership under chapter 45-10.1. Any exemptions to registration under the above chapters that would otherwise apply to those entities organized as such do not apply to this section and registration must be made for the applicant to become an approved vendor. Applicants for approved vendor status using a trade name or a fictitious partnership name must be in full compliance with chapter 47-25 or chapter 45-11 at the time of making the application. Whenever any registration required by this section is cancelled, revoked, or not renewed, the vendor ceases to be an approved vendor.

By signing and filing the application, the vendor applicant appoints the secretary of state as its true and lawful agent for service of process in this state upon whom may be served all lawful process in any action or proceeding against the vendor if the vendor or its registered agent cannot be found for service of process in this state. The signed application is written evidence of the applicant's consent that any process served against the applicant that is so served upon the secretary of state is of the same legal force and effect as if served upon the applicant personally within this state. Within ten days after service of the summons upon the secretary of state pursuant to this subsection, notice of the service with

the summons and complaint in the action must be sent to the defendant vendor at the vendor's last known address by certified mail with return receipt requested and proof of mailing must be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section showing the day and hour of service. When service of process is made as provided in this subsection, the court, before entering a default judgment, or at any stage of the proceeding, may order a continuance as may be necessary to afford the defendant vendor reasonable opportunity to defend any action pending against the vendor.

4. The director of the office of management and budget, or the director's designee, may waive the requirements for registration with the secretary of state as provided in this section and authorize receipt of a bid or proposal from a vendor that unqualifiedly refuses to register as provided in this section if the director or the director's designee makes a written determination that:
 - a. A commodity is so unique and possesses such specific characteristics essential to the government program in question that it is available only from one source and not through wholesalers or retailers; or
 - b. An emergency as defined in subsection 7 of section 54-44.4-02 exists.

SECTION 15. AMENDMENT. Section 54-44.4-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive bidding on purchases - Exempt records. Except as otherwise provided in section 44-08-01 and section 25-16.2-02, purchasing contracts must be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may make multiple awards for term commodity contracts when it deems a multiple award to be in the best interests of the state. Until the date and time set for receiving and opening bids and proposals pursuant to a request for bids or proposals, all bids and proposals received under this chapter are exempt records under subsection 5 of section 44-04-17.1.

SECTION 16. AMENDMENT. Section 54-44.4-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-07. Specification for paper products and inks. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products, are encouraged, whenever possible, when purchasing newsprint printing services, to specify the use of soybean-based ink. ~~By July 1, 1990, at least fifteen percent of the garbage can liners purchased by the office of management and budget, the institutions of higher education, or a state agency or institution to which authority to purchase has been delegated must be starch based. The percentage of starch-based garbage can liners purchased must increase by five percent annually until at least fifty percent of the garbage can liners purchased are starch based. The office of management and budget shall review the procurement specifications currently used by the state to~~

eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks. The North Dakota corn growers association and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of starch-based plastics and in collecting data on the purchase of starch-based plastics. The North Dakota soybean council and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks. In requesting bids for paper products, ~~starch-based plastic products, and soybean-based inks,~~ the office of management and budget must request information on the recycled content of such products.

SECTION 17. AMENDMENT. Section 54-44.4-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-08. Purchase of recycled paper products. The office of management and budget, and any state agency or institution that has authority to purchase products, shall ensure that beginning July 1, 1993, at least ten percent of the total volume of paper and paper products being purchased for state agencies and institutions contain at least twenty-five percent recycled material; beginning January 1, 1994, at least thirty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; beginning January 1, 1996, at least forty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; and beginning January 1, 1998, at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material; ~~and beginning January 1, 2000, at least eighty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material.~~

SECTION 18. REPEAL. Section 54-44-09 of the North Dakota Century Code is repealed.

SECTION 19. EMERGENCY. Section 15 of this Act is declared to be an emergency measure.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 475

SENATE BILL NO. 2179

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

DIVISION OF COMMUNITY SERVICES

AN ACT to amend and reenact subsection 3 of section 20.1-02-17.1, sections 20.1-02-18.1, 54-01.1-08, 54-21.3-04.1, subsections 3 and 4 of section 54-44.5-01, sections 54-44.5-02, 54-44.5-03, 54-44.5-04, 54-44.5-05, and subsections 2, 3, and 4 of section 54-44.5-07 of the North Dakota Century Code, relating to changing the name of the office of intergovernmental assistance to the division of community services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 20.1-02-17.1 of the North Dakota Century Code is amended and reenacted as follows:

3. A detailed impact analysis from the state game and fish department shall be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis by the game and fish department shall include, but shall not be limited to, the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which shall include the fiscal, social, and agricultural impacts of the proposed acquisition. The state game and fish department shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses shall also be forwarded to the ~~office of intergovernmental assistance~~ division of community services which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions shall have thirty days to review the analyses and return their comments to the ~~office of intergovernmental assistance~~ division of community services. Upon expiration of the thirty-day period, all comments received by the ~~office of intergovernmental assistance~~ division of community services shall be forwarded to the state game and fish department. The state game and fish department may, after consideration of such comments, file a final impact analysis with the ~~office of intergovernmental assistance~~ division of community services and the board of county commissioners.

SECTION 2. AMENDMENT. Section 20.1-02-18.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-18.1. Federal wildlife area acquisitions - Submission to county commissioners, opportunity for public comment, and impact analysis required. The governor, the director, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county

or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the office of intergovernmental assistance division of community services which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the office of intergovernmental assistance division of community services. Upon expiration of the thirty-day period, all comments received by the office of intergovernmental assistance division of community services must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of the comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

SECTION 3. AMENDMENT. Section 54-01.1-08 of the North Dakota Century Code is amended and reenacted as follows:

54-01.1-08. ~~Promulgation~~ Adoption of rules and regulations. State agencies may consult with the office of intergovernmental assistance division of community services to establish regulations and procedures for implementation of the provisions of this chapter and to establish such regulations and procedures necessary to assure:

1. That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;
2. That a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and
3. That any displaced person aggrieved by a determination as to eligibility for a payment, or as to the amount of a payment, may have the application reviewed by the head or governing body of the state agency.

SECTION 4. AMENDMENT. Section 54-21.3-04.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-04.1. 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~~ division of community services for recording.

SECTION 5. AMENDMENT. Subsections 3 and 4 of section 54-44.5-01 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. "Director" means the director of the ~~office of intergovernmental assistance~~ division of community services.
4. "~~Office~~" "Division" means the ~~office of intergovernmental assistance~~ division of community services.

SECTION 6. AMENDMENT. Section 54-44.5-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-02. ~~Office of intergovernmental assistance~~ Division of community services - Creation. The ~~office of intergovernmental assistance~~ division of community services is established in the office of management and budget to provide technical assistance to local governments, state agencies, and the executive branch in the area of community and rural planning and development, policy research and development, and grant program implementation. The director of the office of management and budget shall appoint a director of the ~~office~~ division upon the basis of education and experience. The position of director is not a classified position and the director shall serve at the pleasure of the director of the office of management and budget. The director of the ~~office~~ division may employ such other professional, technical, and clerical persons as may be necessary and may fix their compensation within the limits of legislative appropriation. All personnel within the ~~office~~ division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 7. AMENDMENT. Section 54-44.5-03 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-03. Powers and duties of the director. The director shall direct and supervise, with the approval of the director of the office of management and budget, all the administrative and technical activities of the ~~office~~ division.

²⁸⁷ **SECTION 8. AMENDMENT.** Section 54-44.5-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.5-04. ~~Office of intergovernmental assistance~~ Division of community services - Powers and duties. The ~~office of intergovernmental assistance~~ division of community services shall:

1. Provide relevant information on pertinent topics and issues which relate to public policy development, interpretation, modification, and implementation.
2. Research, analyze, and recommend public policy for the office of management and budget and the executive office.
3. Coordinate public policy implementation within the state. Powers conferred upon departments, agencies, or instrumentalities of the state, counties, townships, or cities by any existing state or local law may not be derogated by this duty.
4. Develop state energy conservation policy and manage federal energy conservation program activities between all levels of the public and private sectors regarding the prudent and efficient use of energy resources.
5. Develop, implement, and administer federal categorical and block grant programs assigned to the ~~office~~ division.
6. Advise, coordinate, and assist cities, political subdivisions, and the state in all phases of state and local planning for the physical development of the state.
7. Render financial assistance to any government planning agency within federal law or regulation.
8. Advise, consult, coordinate, assist, and contract with or on behalf of the various planning agencies in developing and harmonizing planning activities of the state.

SECTION 9. AMENDMENT. Section 54-44.5-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-05. Continuing appropriation. There is hereby appropriated as a standing and continuing appropriation to the ~~office of intergovernmental assistance~~ division of community services for the purpose of carrying out the provisions of this chapter, including the administration of such provisions, all moneys returned as repayments of federal or other funds granted under the community development

²⁸⁷ Section 54-44.5-04 was also amended by section 2 of Senate Bill No. 2312, chapter 458.

loan fund, and all earnings from the investment of such moneys, which may be received from time to time by the office division. Administrative expenses may only be charged against such moneys to the extent permitted by federal law or regulations.

SECTION 10. AMENDMENT. Subsections 2, 3, and 4 of section 54-44.5-07 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The office division shall distribute the federal community services block grant funds received under the federal Community Service Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] and shall allocate the funds as follows:
 - a. At least ninety percent must be allocated to community action agencies;
 - b. The greater of fifty-five thousand dollars or five percent may be allocated for state administrative expenses; and
 - c. Not more than five percent may be allocated for state discretionary projects.
3. Each community action agency, in accordance with procedures established by the office division, is entitled to receive a portion of available federal Community Services Block Grant Act [Pub. L. 97-35; 95 Stat. 511; 42 U.S.C. 9903] funds based on that agency's poverty population relative to the state's total poverty population. The office division shall determine poverty levels using criteria established by the United States office of management and budget.
4. Each community action agency is governed by procedures established by the office division as it relates to the community services block grant program.

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 476

HOUSE BILL NO. 1122

(Natural Resources Committee)

(At the request of the Department of Human Services)

COMMUNICATIONS-IMPAIRED TELECOMMUNICATIONS SERVICES

AN ACT to amend and reenact sections 54-44.8-01, 54-44.8-03, and 54-44.8-06 of the North Dakota Century Code, relating to administration of the program for telecommunications services for communications-impaired persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁸ **SECTION 1. AMENDMENT.** Section 54-44.8-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-01. Definitions. As used in this chapter, 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, or mobility impaired so as to be unable to use a telephone readily purchased from a retail store.
4. "Disadvantaged" means residing in a household that has a median income not more than the applicable median income in this state, except the term includes residing in a household that has a median income not more than one hundred fifty percent of the applicable median income in this state if the resident is deaf.
5. "Division" means the information services division of the office of management and budget.
- ~~5.~~ 6. "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.
- ~~6.~~ 7. "Program" means the program established under section 54-44.8-03.
- ~~7.~~ 8. "Radio communications access" means the radio access between a customer of a radio communications service provider and the provider.

²⁸⁸ Section 54-44.8-01 was also amended by section 24 of Senate Bill No. 2043, chapter 483.

8. 9. "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. 10. "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.
40. 11. "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.
44. 12. "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.

²⁸⁹ **SECTION 2. AMENDMENT.** Section 54-44.8-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-03. 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~~ department 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~~ department through gifts and grants received under section 54-44.8-06 and from funding made available by the information services division from the surcharge collected pursuant to section 54-44.8-08, which are hereby appropriated.

²⁸⁹ Section 54-44.8-03 was also amended by section 26 of Senate Bill No. 2043, chapter 483.

SECTION 3. AMENDMENT. Section 54-44.8-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-06. Gifts and grants. The ~~vocational rehabilitation division~~ department of human services 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.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 477

SENATE BILL NO. 2411

(Senator Kilzer)

MICROFILM SERVICES

AN ACT to amend and reenact section 54-46.1-01 of the North Dakota Century Code, relating to the provision of microfilm services; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁰ **SECTION 1. AMENDMENT.** Section 54-46.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-46.1-01. Central microfilm unit - Contracting for services. The state records administrator shall establish and maintain a central microfilm unit and microfilm any record of any state office, agency, or department in either the executive, legislative, or judicial branch of state government, if the administrator determines the cost of ~~such~~ the microfilming is reasonable in relation to the record's historical significance or the frequency and type of use of the record. If the administrator and the office of management and budget determine that the services called for in this chapter can be provided more efficiently and economically through contracting with private contractors, the administrator may enter into such contracts or require an agency to use the services of a contractor as allowed by section 54-46.1-05. Release of records to a contractor for microfilming under this section or section 54-46.1-05 is not a violation of section 12.1-13-01, 54-46.1-07, or any other law that provides for any civil or criminal penalty for the release of certain records. A contractor hired by the administrator under this section or by an agency under section 54-46.1-05 may not disclose any information from any record, disclose any record the contractor receives for microfilming services, or make or retain a copy or other reproduction of a record not required by the contract to be made. Any contractor hired by the administrator under this section or by an agency under section 54-46.1-05 is subject to the penalties provided by law for unauthorized release of public records, and the contractor must agree to fully comply with all applicable state or federal laws or rules prohibiting release of public records. Each office, agency, and department shall reimburse the central microfilm unit for the actual costs incurred in microfilming its records. The administrator shall deposit moneys received under this section in the information services operating fund. The administrator shall employ professional, technical, and clerical personnel as the administrator determines to be necessary to carry out the duties prescribed in this chapter and, within the limits of the legislative appropriation, shall fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The administrator may perform microfilm services for any state institution and for any county, when the institution

²⁹⁰ Section 54-46.1-01 was also amended by section 32 of Senate Bill No. 2043, chapter 483.

or county requests such services and the administrator agrees that the request is consistent with good records management practices.

SECTION 2. LEGISLATIVE COUNCIL STUDY OF PRIVATIZATION OF SERVICES PROVIDED BY STATE AGENCIES. During the 1999-2001 interim, the legislative council shall conduct a study of privatizing and contracting for services provided by state agencies. In conducting the study, the legislative council shall request information from representatives of the executive branch, the judicial branch, higher education, public employee organizations, entities that have contracted with state agencies for services, and businesses or other entities that are interested in providing services for or in place of state agencies. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-seventh legislative assembly.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 478

SENATE BILL NO. 2071

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

PERS VESTING AND BENEFITS

AN ACT to create and enact a new subsection to section 54-52-17 and a new section to chapter 54-52 of the North Dakota Century Code, relating to acceptance of rollovers from other qualified plans and vesting of employer contributions under the public employees retirement system; to amend and reenact subsection 1 of section 54-52-01, subdivisions b and d of subsection 3 of section 54-52-17, paragraphs 1 and 2 of subdivision a of subsection 4 of section 54-52-17, subdivision d of subsection 4 of section 54-52-17, subsections 5, 6, and 7 of section 54-52-17, sections 54-52-17.5, and 54-52-17.10 of the North Dakota Century Code, relating to definitions, determination of retirement dates, computation of benefits, eligibility for early retirement benefits, vesting, postretirement adjustments, and prior service retiree adjustments under the public employees retirement system; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 54-52-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Account balance" means the total contributions made by the employee, vested employer contributions under section 9 of this Act, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.

²⁹² **SECTION 2. AMENDMENT.** Subdivisions b and d of subsection 3 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 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 three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
- 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

²⁹¹ Section 54-52-01 was also amended by section 46 of House Bill No. 1188, chapter 162, and section 1 of House Bill No. 1257, chapter 482.

²⁹² Section 54-52-17 was also amended by sections 2 and 3 of House Bill No. 1071, chapter 480.

which the member attains the age of fifty-five years and has completed ~~five~~ three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least ~~five~~ three years of eligible employment.

²⁹³ **SECTION 3. AMENDMENT.** Paragraphs 1 and 2 of subdivision a of subsection 4 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- (1) Service benefit equals one and ~~seventy-seven~~ eighty-nine hundredths percent of final average salary multiplied by the number of years of service employment.
- (2) Prior service benefit equals one and ~~seventy-seven~~ eighty-nine hundredths percent of final average salary multiplied by the number of years of prior service employment.

²⁹⁴ **SECTION 4. AMENDMENT.** Subdivision d of subsection 4 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed ~~five~~ three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.

²⁹⁵ **SECTION 5. AMENDMENT.** Subsections 5, 6, and 7 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. Upon termination of employment after completing ~~five~~ three years of eligible employment, except for supreme and district court judges, who must complete 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 single life benefits.

²⁹³ Section 54-52-17 was also amended by sections 2 and 3 of House Bill No. 1071, chapter 480.

²⁹⁴ Section 54-52-17 was also amended by sections 2 and 3 of House Bill No. 1071, chapter 480.

²⁹⁵ Section 54-52-17 was also amended by sections 2 and 3 of House Bill No. 1071, chapter 480.

6. If before retiring a member dies after completing ~~five~~ three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's surviving spouse. However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate. If the member has not designated an alternate beneficiary, 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 of normal retirement age at the date of death.
 - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
 - d. If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than ~~five~~ three years of eligible employment and was not a supreme or district court judge. If the member was a supreme or district court judge, the board shall automatically refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.

²⁹⁶ **SECTION 6.** A new subsection to section 54-52-17 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

²⁹⁶ Section 54-52-17 was also amended by sections 2 and 3 of House Bill No. 1071, chapter 480.

The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.

SECTION 7. AMENDMENT. Section 54-52-17.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.5. Postretirement adjustments. An individual who, on July 31, ~~1997~~ 1999, is receiving retirement benefits under subdivision a of subsection 4 of section 54-52-17, or disability retirement benefits under subdivision e of subsection 4 of section 54-52-17, is entitled to receive an increase in benefits equal to ~~three~~ eight percent of the individual's present benefits with the increase payable beginning August 1, ~~1997~~ 1999.

SECTION 8. AMENDMENT. Section 54-52-17.10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.10. Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on July 31, ~~1997~~ 1999, are entitled to receive an increase in benefits equal to ~~five~~ eight percent of the individual's present benefit, with the increased benefits payable beginning August 1, ~~1997~~ 1999. 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 9. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Vesting of employer contributions. Except for supreme and district court judges, who are not eligible for benefits under this section, a member's account balance includes vested employer contributions equal to the member's contributions to the deferred compensation plan for public employees under chapter 54-52.2, or member contributions to other participating employer supplemental Internal Revenue Code section 457 or 403(b) retirement programs as approved by the board, with the minimum member contribution being twenty-five dollars. However, the vested employer contribution may not exceed:

1. For months one through twelve of service credit, twenty-five dollars or one percent of the member's monthly salary, whichever is greater.
2. For months thirteen through twenty-four of service credit, twenty-five dollars or two percent of the member's monthly salary, whichever is greater.
3. For months twenty-five through thirty-six of service credit, twenty-five dollars or three percent of the member's monthly salary, whichever is greater.
4. For service exceeding thirty-six months, twenty-five dollars or four percent of the member's monthly salary, whichever is greater.
5. The vested employer contribution may not exceed four percent of the member's monthly salary.

Vested employer contributions must be credited monthly to the member's account balance.

SECTION 10. APPROPRIATION. There is hereby appropriated out of any moneys received by the public employees retirement system board, not otherwise appropriated, the sum of \$87,181, or so much of the sum as may be necessary, to the public employees retirement system for the purpose of administering this Act for the biennium beginning July 1, 1999, and ending June 30, 2001. The board is authorized one additional full-time equivalent position to implement this Act.

SECTION 11. EFFECTIVE DATE. Section 9 of this Act becomes effective on January 1, 2000.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 479

HOUSE BILL NO. 1069

(Representative Wald)

PERS EMPLOYEE CONTRIBUTIONS

AN ACT to amend and reenact subsection 3 of section 54-52-05 of the North Dakota Century Code, relating to employer payment of employee contributions under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 54-52-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay the employee contributions required by subsection 2 and ~~section~~ sections 54-52-06.1 ~~for all compensation earned after June 30, 1983, and may pay the employee contributions required by section~~ and 54-52-06.2 ~~for all compensation earned after June 30, 1994.~~ The amount paid must be paid by the employer in lieu of contributions by the employee. If the state ~~decides~~ determines not to pay the contributions, the amount that would have been paid ~~will~~ must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they ~~shall~~ may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer ~~shall exercise~~ exercising its option under this subsection ~~by July 15, 1983, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.~~

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 480

HOUSE BILL NO. 1071

(Government and Veterans Affairs Committee)

(At the request of the Public Employees Retirement System)

JUDGES POSTRETIREMENT, DISABILITY, AND SURVIVOR'S BENEFITS

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to postretirement adjustments for supreme and district court judges under the public employees retirement system; to amend and reenact subdivision e of subsection 4 of section 54-52-17 and subsection 6 of section 54-52-17 of the North Dakota Century Code, relating to disability retirement and survivor's benefits for supreme and district court judges under the public employees retirement system; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Judges postretirement adjustments. A supreme or district court judge who, on December 31, 1999, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2000. A supreme or district court judge who, on December 31, 2000, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, 2001.

²⁹⁷ **SECTION 2. AMENDMENT.** Subdivision e of subsection 4 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. Disability Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars. A participant who, on July 31, 1997, is receiving disability retirement benefits that are not based upon the benefit multiplier is entitled to receive an increase in benefits equal to five percent of the individual's present benefit with the increased benefits payable beginning August 1, 1997.

²⁹⁷ Section 54-52-17 was also amended by sections 2, 3, 4, 5, and 6 of Senate Bill No. 2071, chapter 478.

²⁹⁸ **SECTION 3. AMENDMENT.** Subsection 6 of section 54-52-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If before retiring a member dies after completing five years of eligible employment, the board shall pay the member's account balance to the member's surviving spouse. However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate. If the member has not designated an alternate beneficiary, the surviving spouse of the member may select ~~one of the following optional forms of payment~~ a form of payment as follows:
 - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
 - b. The surviving spouse of all other members may select one of the following options:
 - ~~a.~~ (1) A lump sum payment of the member's retirement account as of the date of death.
 - ~~b.~~ (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
 - ~~c.~~ (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.
 - ~~d.~~ (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal

²⁹⁸ Section 54-52-17 was also amended by sections 2, 3, 4, 5, and 6 of Senate Bill No. 2071, chapter 478.

retirement age, with the increase payable beginning August 1, 1995.

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

Approved March 25, 1999

Filed March 25, 1999

CHAPTER 481**SENATE BILL NO. 2072**

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

**NON-MEDICARE RETIREE HEALTH INSURANCE
PREMIUMS**

AN ACT to amend and reenact subsection 1 of section 54-52.1-02 of the North Dakota Century Code, relating to determination of health insurance premiums for retired public employees not eligible for medicare.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-52.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Medical and hospital benefits coverage group consisting of active eligible employees and retired employees not eligible for medicare. In determining premiums for coverage under this subsection for ~~active eligible employees, the total projected premium requirements of the entire subgroup must be reduced by the projected aggregate monthly credit toward hospital and medical benefits coverage allowed retired employees not eligible for medicare under sections 54-52.1-03.2 and 54-52.1-03.3. The reduced premium requirements must then be divided by the number of subgroup members to determine the premiums for active eligible employees. Premiums for coverage under this subsection for retired employees not eligible for medicare must be calculated based on the projected premium requirements of the entire subgroup less the total projected premium income as determined under this subsection for active eligible employees, the rate for a non-medicare retiree single plan is one hundred fifty percent of the active member single plan rate, the rate for a non-medicare retiree family plan of two people is twice the non-medicare retiree single plan rate, and the rate for a non-medicare retiree family plan of three or more persons is two and one-half times the non-medicare retiree single plan rate.~~

Approved March 4, 1999
Filed March 4, 1999

CHAPTER 482

HOUSE BILL NO. 1257

(Representatives Wald, Grande, Klein)
(Senators Grindberg, Krebsbach, Wardner)

STATE DEFINED CONTRIBUTION RETIREMENT PLAN

AN ACT to create and enact chapter 54-52.6 of the North Dakota Century Code, relating to a defined contribution retirement plan for nonclassified state employees; to amend and reenact subsection 3 of section 54-52-01, sections 54-52-02.5, 54-52-26, and subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code, relating to definitions, participation by newly appointed officials in a defined contribution retirement plan, confidentiality of records, and retiree health benefit fund contributions under the public employees retirement system; to provide a penalty; and to provide an appropriation and a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 54-52-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and includes appointive and elective officials ~~at their sole election~~ who elect to remain members of the retirement system; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials ~~eligible~~ who elect to participate under section 54-52-02.5 are eligible employees and shall participate in the public employees retirement system. Eligible employee does not include nonclassified state employees who elect to become members of the retirement plan established under chapter 54-52.6 but does include employees of the judicial branch and employees of the board of higher education and state institutions under the jurisdiction of the board.

SECTION 2. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly appointed officials. After ~~July 4, 1979~~, any December 31, 1999, a person appointed to an office for the first time must, from and after the date ~~he~~ that person qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a person appointed, who, after ~~July 4, 1979~~

²⁹⁹ Section 54-52-01 was also amended by section 46 of House Bill No. 1188, chapter 162, and section 1 of Senate Bill No. 2071, chapter 478.

December 31, 1999, does not hold office as an appointed official at the time of ~~his~~ that person's appointment.

SECTION 3. AMENDMENT. Section 54-52-26 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter ~~and~~, chapter 54-52.2, and chapter 54-52.6 are confidential and are not public 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.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. Any information provided to the member's participating employer under this subsection must remain confidential.

SECTION 4. AMENDMENT. Subsection 1 of section 54-52.1-03.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding and providing hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this chapter. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 or the retirement plan under chapter 54-52.6 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public employees retirement system under chapter 54-52 or chapter 54-52.6. The employer of a national guard security officer or firefighter shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all national guard security officers or firefighters participating in the public employees retirement system under chapter 54-52. Job service North Dakota shall reimburse monthly the retiree health benefits fund for credit received under section 54-52.1-03.3 by members of the retirement program established by job service North Dakota under section 52-11-01. The

board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended.
- b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.

SECTION 5. Chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

54-52.6-01. Definition of terms. As used in this chapter, unless the context otherwise requires:

1. "Board" means the public employees retirement system board.
2. "Deferred member" means a person who elected to receive deferred vested retirement benefits under chapter 54-52.
3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by the central personnel division.
4. "Employee" means any person employed by the state, whose compensation is paid out of state funds, or funds controlled or administered by the state or paid by the federal government through any of its executive or administrative officials.
5. "Employer" means the state of North Dakota.
6. "Participating member" means an eligible employee who elects to participate in the defined contribution retirement plan established under this chapter.
7. "Permanent employee" means a state employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
8. "Wages" and "salaries" means earnings in eligible employment under this chapter reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under 26 U.S.C. 125, 401(k), 403(b), 414(h), or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between an employee and a participating employer. Bonuses may be

considered as salary under this section if reported and annualized pursuant to rules adopted by the board.

54-52.6-02. Election.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on December 31, 1999, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 1999; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 1999. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after December 31, 1999, may make an election at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter.
2. If an individual who is a deferred member of the public employees retirement system on December 31, 1999, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of sixty days after the date of that reemployment. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the

defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

3. An employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service.
4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

54-52.6-03. Transfer of accumulated fund balances. For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for employees electing to transfer prior to January 1, 2000, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2000, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer and employee contributions made pursuant to sections 54-52-05 and 54-52-06, plus interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election.

The board shall calculate the amount to be transferred for persons employed after December 31, 1999, using only the formula contained in subsection 2.

54-52.6-04. Administration. The board shall administer the defined contribution retirement plan established under this chapter and the board or vendors

contracted for by the board shall invest the assets of the plan. The board is the fiduciary and the trustee of the plan. The board has the exclusive authority and responsibility to employ or contract with personnel and for services that the board determines necessary for the proper administration of and investment of assets of the plan, including managerial, professional, legal, clerical, technical, and administrative personnel or services.

54-52.6-05. Direction of investments. Each participating member shall direct the investment of the individual's accumulated employer and employee contributions and earnings to one or more investment choices within available categories of investment provided by the board.

54-52.6-06. Administrative expenses - Continuing appropriation. The administrative expenses of the plan must be paid by the participating members in a manner determined by the board. The board or vendors contracted for by the board may charge reasonable administrative expenses and deduct those expenses from a participating member's account in the defined contribution retirement plan established under this chapter. The board shall place any money deducted in an administrative expenses account with the state treasurer. The board may also use funds from the payroll clearing account established pursuant to section 54-52.3-03 to pay for consulting expenses. All moneys in the payroll clearing account, not otherwise appropriated, or so much of the moneys as may be necessary, are appropriated to the board on a continuing basis for the purpose of retaining a consultant as required for the administration of this chapter.

54-52.6-07. Participation in other plans. A participating member may not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. However, this section does not prohibit a participating member from participating in a retirement plan established by this state or other public sector employer under the federal Internal Revenue Code.

54-52.6-08. Credit of transfers. The board shall promptly credit the plan account of a participating member who makes an election under this chapter to terminate membership in the public employees retirement system under chapter 54-52 with any amount transferred from the public employees retirement system.

54-52.6-09. Contributions - Penalty.

1. Each participating member shall contribute monthly four percent of the monthly salary or wage paid to the participant, and this assessment must be deducted from the participant's salary in equal monthly installments commencing with the first month of participation in the defined contribution retirement plan established under this chapter.
2. The employer shall contribute an amount equal to four and twelve hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the employer under subsection 3, the employer shall contribute, in addition, an amount equal to the required employee's contribution. The employer shall pay monthly such contribution into the participating member's account from its funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.

3. Each employer, at its option, may pay the employee contributions required by this section for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in lieu of contributions by the employee. If the employer decides not to pay the contributions, the amount that would have been paid will continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. Contributions paid by the employer may not be included as gross income of the employee in determining tax treatment under this code and the federal Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from the same source of funds used in paying compensation to the employee. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. Employee contributions paid by the employer must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made before the date on which employee contributions were assumed by the employer. An employer shall exercise its option under this subsection by December 1, 1999, and shall report its choice to the board in writing. The option chosen may not be revoked for the remainder of the biennium. Thereafter, the option choice must be forwarded to the board, in writing, by June fifteenth of each odd-numbered year.

54-52.6-10. Vesting. A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under this chapter. A participating member vests in the employer contributions made on that member's behalf to an account under this chapter according to the following schedule:

1. Upon completion of two years of service, fifty percent.
2. Upon completion of three years of service, seventy-five percent.
3. Upon completion of four years of service, one hundred percent.

A participating member who was a member or deferred member of the public employees retirement system under chapter 54-52 who makes an election to participate in the defined contribution retirement plan pursuant to this chapter, must be credited with the years of service accrued under the public employees retirement system on the effective date of participation in the defined contribution retirement plan for the purpose of meeting vesting requirements for benefits under this section. Any forfeiture as a result of the failure of a participating member to vest in the employer contribution must be deposited in the administrative expenses account.

54-52.6-11. Refund beneficiaries. A participating or former participating member may nominate one or more individuals as a refund beneficiary by filing written notice of nomination with the board. If the participating member or former participating member is married at the time of the nomination and the participant's spouse is not the refund beneficiary for one hundred percent of the account, the nomination is not effective unless the nomination is signed by the participant's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

54-52.6-12. Qualified domestic relations orders.

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the defined contribution retirement plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules adopted by the board for determining the qualified status of domestic relations orders, administering distributions, and apportioning accounts under the qualified orders. Upon determination of the domestic relations order as qualified, the board shall notify the participating member, the named alternate payee, and the vendor, if applicable, of its receipt of the qualified domestic relations order.

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of a participating member's account in the defined contribution retirement plan under this chapter. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise allowed under this chapter. However, a qualified domestic relations order may require distribution from an account in the defined contribution retirement plan under this chapter notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
 - a. The name and last known mailing address of the participating member and the name of the mailing address of each alternate payee covered by the order;
 - b. The amount or percentage of the participating member's account to be paid to each alternate payee;
 - c. The number of payments or period to which the order applies; and
 - d. Each retirement plan to which the order applies.

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.

2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased

participant or, if there is no legal representative, to the deceased participant's estate.

3. A deferred member or refund beneficiary may elect one or a combination of several of the following methods of distribution of the accumulated balance:
 - a. A lump sum distribution to the recipient.
 - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
 - c. Periodic distributions, as authorized by the board.
 - d. No current distribution, in which case the accumulated balance must remain in the plan until the deferred member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.

54-52.6-14. Disability benefits. The board shall provide a procedure whereby a participating member may use a portion of that person's account contributions under this chapter to purchase disability insurance.

54-52.6-15. Board to provide information. The board shall provide information to employees who are eligible to elect to become participating members under this chapter. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system under chapter 54-52 and the retirement plan established under this chapter. Notwithstanding any other provision of law, the board is not liable for any election or investment decision made by an employee based upon information provided to an employee under this chapter.

54-52.6-16. State income tax deductions. For the purposes of state income tax, the assessment imposed by this chapter on the employee must be treated in accordance with existing state statutes on state income tax.

54-52.6-17. Exemption from state premium tax. Premiums, consideration for annuities, and membership fees are exempt from premium taxes payable pursuant to section 26.1-03-17.

54-52.6-18. Savings clause. If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

54-52.6-19. Overpayments. The board has the right of setoff to recover overpayments made under this chapter and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member, refund beneficiary, or other person who has a claim to a distribution or any other benefit from a plan governed by this chapter.

54-52.6-20. Correction of records. The board shall correct errors in the records and actions in plans under this chapter and shall seek to recover overpayments and shall seek to collect underpayments.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the administrative expense account under section 54-52.6-06 and the payroll clearing account under section 54-52.3-03, in the state treasury, not otherwise appropriated, the sum of \$197,000, or so much of the sum as may be necessary, to the public employees retirement system board for the purpose of administering this chapter, including consulting expenses, for the biennium beginning July 1, 1999, and ending June 30, 2001. The public employees retirement system board is authorized one additional full-time equivalent position to implement this Act.

Approved April 1, 1999

Filed April 2, 1999

CHAPTER 483

SENATE BILL NO. 2043

(Legislative Council)

(Information Technology Committee)

INFORMATION TECHNOLOGY DEPARTMENT

AN ACT to provide for the information technology department and transition of responsibilities to the department; to amend and reenact sections 15-65-02, 41-09-46, 54-16-11.1, 54-35-15, 54-44-11, 54-44.6-03, 54-44.8-01, 54-44.8-02, 54-44.8-03, 54-44.8-04, 54-44.8-05, 54-44.8-07, 54-44.8-08, 54-46-03, and 54-46.1-01 of the North Dakota Century Code, relating to references to the information services division, the information services operating fund, the legislative council, and the state records administrator; to repeal chapter 54-44.2 of the North Dakota Century Code, relating to the information services division; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 16 of this Act:

1. "Agency" or "entity" does not include any agricultural commodity promotion group or any occupational or professional board.
2. "Department" means the information technology department.
3. "Information technology" means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data, and video.
4. "Network services" means the equipment, software, and services necessary to transmit voice, data, or video.

SECTION 2. Information technology department - Responsibility. The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance.

SECTION 3. Chief information officer of the state. The governor shall appoint the chief information officer of the state. The governor shall appoint the chief information officer on the basis of education, experience, and other qualifications in information technology and administration. The position of chief information officer is not a classified position. The chief information officer serves at the pleasure of the governor. The governor shall set the salary of the chief information officer within the limits of legislative appropriations.

SECTION 4. Duties of chief information officer. The chief information officer shall:

1. Administer the department.
2. Employ any personnel determined to be necessary to carry out the responsibilities of the department and duties as prescribed by law.
3. Fix the salaries of all employees within the department, within the limits of legislative appropriation. All personnel within the department are entitled to actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 5. Powers and duties of department. The department:

1. Shall provide, supervise, and regulate information technology of all executive branch state entities, excluding the institutions under the control of the board of higher education.
2. Shall provide network services in a way that ensures the network requirements of a single entity do not adversely affect the functionality of the whole network, facilitates open communications with the citizens of the state, minimizes the state's investment in human resources, accommodates an ever-increasing amount of traffic, supports rapid detection and resolution of problems, protects the network infrastructure from damage and security breaches, provides for the aggregation of data, voice, video, and multimedia into a statewide transport mechanism or backbone, and provides for the network support for the entity to carry out its mission.
3. May review and approve additional network services that are not provided by the department.
4. May purchase or lease equipment or replace, including by trade or resale, equipment as may be necessary to carry out sections 1 through 16 of this Act. Each executive branch agency or institution, except the institutions under the control of the board of higher education, shall submit to the department, in accordance with guidelines established by the department, a written request for the lease, purchase, or other contractual acquisition of information technology. The department shall review requests for conformance with the requesting entity's information technology plan and compliance with statewide policies and standards. If the request is not in conformance or compliance, the department may disapprove the request or require justification for the departure from the plan or statewide policy or standard.
5. Shall provide information technology, including assistance and advisory service, to the executive, legislative, and judicial branches. If the department is unable to fulfill a request for service from the legislative or judicial branch, the information technology may be procured by the legislative or judicial branch within the limits of legislative appropriations.
6. May request information on or review information technology, applications, system development projects, and application development projects of executive branch agencies.

7. Shall study emerging technology and evaluate its impact on the state's system of information technology.
8. Shall develop guidelines for reports to be provided by each executive branch agency, institution, or department, the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.
9. Shall review the information technology management of executive branch agencies or institutions, including institutions under the control of the board of higher education as provided in section 13 of this Act.
10. Shall perform all other duties necessary to carry out sections 1 through 16 of this Act.

SECTION 6. Business plan. The department shall develop and maintain a business plan. The business plan must:

1. Define the department's overall organization, mission, and delivery of services.
2. Define the strategies for improving personnel productivity and workflow processes of the department.
3. Determine how use of the statewide network will improve learning in the state.
4. Determine how the statewide networks can provide network services for the benefit of Indian tribes, nonprofit organizations, and noncommercial public television stations licensed by the federal communications commission to operate in this state.
5. Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.
6. Define the processes that will ensure that counties, cities, and school districts receive maximum benefit of the statewide network.
7. Define a fair and equitable billing structure that provides for payback of the initial investments and ongoing operations of the statewide network.
8. Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to ensure training on its use; and to foster information technology innovation by state entities.
9. Address the deployment of encryption and the administration of digital signatures.
10. Address information and system backup and disaster recovery.

SECTION 7. Statewide wide area network advisory committee. The statewide wide area network committee consists of the chief information officer or the officer's designee, who is a nonvoting member; the state court administrator or the administrator's designee, with the approval of the chief justice of the supreme court; the commissioner of higher education or the commissioner's designee; and nine members appointed by the governor. The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary and secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in this state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. The department shall provide staff services to the committee. Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or employees, members of the committee are entitled to be compensated for time spent in attendance at meetings of the committee and for other travel as approved by the chairman of the committee at the rate of sixty-two dollars and fifty cents per day and are entitled to reimbursement for their actual and necessary expenses incurred in the same manner as other state officials. The compensation and expenses are to be paid from appropriations for the department. The committee shall advise the department with respect to planning and implementation of wide area network services provided by the department.

SECTION 8. Required use of wide area network services. Each state agency and institution that desires access to wide area network services and each county, city, and school district that desires access to wide area network services to transmit voice, data, or video outside that county, city, or school district shall obtain those services from the department. The chief information officer may exempt from the application of this section a county, city, or school district that demonstrates its current wide area network services are more cost-effective for or more appropriate for the specific needs of that county, city, or school district than wide area network services available from the department. The chief information officer shall exempt from the application of this section a county, city, or school district that is under contract to receive wide area network services from an entity other than the department, for the term of that contract, but that political subdivision may not extend or renew that contract beyond July 31, 2001.

SECTION 9. Information technology standards. Based on information from state agencies and institutions, the department shall develop statewide information technology policies, standards, and guidelines. Unless an exemption is granted by the department, each executive branch state agency and institution, excluding the institutions under the control of the board of higher education with respect to academic and research uses of information technology, shall comply with the policies and standards developed by the department. Unless an exemption is granted by the department, each entity receiving wide area network services provided by the department shall comply with the policies and standards developed by the department with respect to access to or use of wide area network services.

SECTION 10. Information technology coordinators. Each agency or institution shall appoint an information technology coordinator. The coordinator shall maintain liaison with the department and assist the department in areas related to making the most economical use of information technology.

SECTION 11. Information technology plans. Each executive branch state agency or institution, including the institutions under the control of the board of higher education, shall prepare an information technology plan, subject to approval by the department. The plan must be submitted to the department by January fifteenth of each even-numbered year. The plan must be prepared based on guidelines developed by the department; must provide the information technology goals, objectives, and activities of the entity for the current biennium and the next two bienniums; and must include a list of information technology assets owned, leased, or employed by the entity. Each entity required to file a plan shall provide interim updates to its plan if major information technology changes occur which affect its plan. The department shall review each entity's plan for compliance with statewide information technology policies and standards and may require an entity to change its plan to comply with statewide policies or standards or to resolve conflicting directions among plans. Agencies of the judicial and legislative branches shall file their information technology plans with the department by January fifteenth of each even-numbered year. Each state entity shall prepare its budget request for the next biennium based on its information technology plan. The agency's budget request and the governor's budget recommendation must include supporting information describing in detail how the information technology plan relates to the budget request and recommendation. Any budget adjustment by the budget office must include the corresponding change to the plan. Based on the plans, the department shall prepare a statewide information technology plan and distribute copies of that plan to members of the legislative assembly as requested by the legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and objectives. Any state agency or institution, county, city, school district, or other entity that uses the statewide network or is a user of services of the department shall file a plan that includes and identifies all requirements for voice, data, or video.

SECTION 12. Coordination of activities - Reports. The department shall cooperate with each state entity providing access to any computer data base or electronically filed or stored information under subsection 4 of section 44-04-18 to assist in providing economical, efficient, and compatible access. The chief information officer shall conduct conferences and meetings with political subdivisions to review and coordinate information technology. The chief information officer and the commissioner of the board of higher education shall meet at least twice each year to plan and coordinate their information technology. The chief information officer and commissioner shall consider areas in which joint or coordinated information technology may result in more efficient and effective state government operations. Upon request, the chief information officer shall report to the legislative council or its designated committee regarding the coordination of services with political subdivisions, and the chief information officer and commissioner shall report to the legislative council or its designated committee regarding their findings and recommendations.

SECTION 13. Compliance reviews. The department shall review the information technology management of executive branch state agencies and institutions, including the institutions under the control of the board of higher education, as determined by the chief information officer. The review must include an evaluation of the entity's planning effectiveness, conformance to its information technology plan, compliance with statewide policies and standards, asset quality, and training methods, and for an entity that contracts for information technology services, an analysis of the entity's contract management system and the contractor's compliance with contract provisions. If an agency or institution is found not to be in conformance to its plan or in compliance with statewide policies and standards and

does not agree to come into conformance or compliance, the department shall report the issue to the legislative council.

SECTION 14. Information technology operating account. The department shall establish a state information technology operating account in the state treasury to be used, in accordance with legislative appropriation, for procuring and maintaining information technology, network services, and central microfilm unit equipment and supplies, and for providing information technology, network services, and central microfilm unit services to state entities and network services to users of the state network. Unless exempted by law, each agency or institution provided with information technology or network services shall pay to the department the charges as determined by the department. The department shall deposit the amounts received in the information technology operating account or the information technology development account, as appropriate.

SECTION 15. Acceptance of funds. The department may accept federal or other funds, which must be deposited in the information technology operating account and which may be spent subject to legislative appropriation. The department may apply for any public or private grants available for the improvement of information technology.

SECTION 16. Confidentiality. The department may receive from various agencies and various agencies may provide to the department any information from the agencies necessary to effect the purposes of sections 1 through 16 of this Act without regard to the confidential nature of the information. The department is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved. Except for a request for access authorized by section 54-10-22.1, the department shall refer a request for access to or inspection of information provided by an agency to that agency for response. Referral to the agency satisfies any responsibility of the department to provide that information under open records requirements. Upon court order the department shall provide access to or inspection of this information in accordance with restrictions of that entity involved governing dissemination of that information.

SECTION 17. TRANSITION. The governor, director of the office of management and budget, and director of the information services division shall take appropriate actions before August 1, 1999, to ensure the transition of the information services division into the information technology department. Before October 15, 1999, the chief information officer shall develop the business plan for the department.

SECTION 18. AMENDMENT. Section 15-65-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-65-02. Membership - Appointment - Term - No compensation - Expenses - Organization. The North Dakota educational telecommunications council consists of:

1. The commissioner of higher education or the commissioner's designee.
2. The superintendent of public instruction or the superintendent's designee.
3. The ~~director of the~~ chief information services division of the office of management and budget officer of the state.
4. A representative of the telephone industry, appointed by the governor.

5. A school board member, appointed by the governor.
6. A school administrator, appointed by the governor.
7. A schoolteacher, appointed by the governor.

The term of office of the appointed members is three years. At all times either the school board member or the school administrator must be from a school with an enrollment of fewer than five hundred students.

The members appointed by the governor must be reimbursed for actual necessary expenses incurred in the performance of their duties as members of the council at the same rates as provided by law for other state officers and employees. The costs incurred in reimbursing the members of the council for their actual necessary expenses must be paid by the superintendent of public instruction. The other members of the council are not entitled to any compensation or reimbursement for expenses incurred in performing their duties.

³⁰⁰ **SECTION 19. AMENDMENT.** Section 41-09-46 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

41-09-46. (9-407) Information from filing officer - Computerized central notice system - Secretary of state to compile lists for crops and livestock - Distribution of lists.

1. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.
2. Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment and if there is, giving the date and hour of filing of each statement and the names and addresses of each secured party. The fee for this certificate is as provided by section 41-09-42. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a fee as provided by section 41-09-42.
3. The secretary of state shall develop and implement a computerized central notice system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, and 41-09-40. The system must connect each register of deeds' office to the secretary of state's office through the information services division technology department. The system must allow access to financing statement information by equipment that conforms to requirements determined by the ~~information services~~

³⁰⁰ Section 41-09-46 was also amended by section 5 of House Bill No. 1180, chapter 313.

~~division~~ department. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central notice system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central notice system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.

4. The lists prepared pursuant to subsection 3 must be distributed monthly by mail at least five business days in advance of their effective date. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 41-09-42.
5. Upon a verbal request of any person, the secretary of state or a designee or a register of deeds shall verbally provide information contained on the list generated through the computerized central notice system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central notice system to lose its federal certification. The fee for a verbal request and such a certificate must be as provided by section 41-09-42.
6. A computer printout from the computerized central notice system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

SECTION 20. AMENDMENT. Section 54-16-11.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of the verified petition under section 54-16-10, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for the information ~~services division~~ technology department, central duplicating, surplus property, or roughrider

industries division of the department of corrections and rehabilitation; ~~or central microfilm.~~

SECTION 21. AMENDMENT. Section 54-35-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-15. Information technology program - Staff - Powers and duties.

1. The legislative council, or its designee, shall provide information technology research and staff services to the legislative branch. The services must be provided in accordance with the existing statutory authority of the legislative council and within the framework of its other staff services.
2. The legislative council staff office shall provide information technology services, and the council, or its designee, may hire such additional staff as are necessary, and set compensation for any additional staff within the limits of legislative appropriations.
3. The council, or its designee, shall structure the provision of information technology services and assistance to the legislative assembly; and shall receive such cooperation and assistance from other state agencies as it may reasonably request.
4. ~~The council, or its designee, shall study emerging technology and evaluate its impact on the state's system of information technology, and report and make recommendations to the legislative council and the legislative assembly regarding information technology in state government.~~
5. ~~The council, or its designee, shall develop guidelines for reports to be provided by each executive branch agency, institution, or department, the institutions under the control of the board of higher education, and agencies of the judicial and legislative branches on information technology in those entities.~~
6. ~~The council, or its designee, shall review the information technology management of executive branch agencies, institutions, or departments, institutions under the control of the board of higher education, and agencies of the judicial and legislative branches as determined necessary by the council or its designee.~~
7. ~~The council, or its designee, shall perform information systems reviews and audits of information technology systems or applications of executive branch state agencies, institutions, and departments, institutions under the control of the state board of higher education, and agencies of the judicial and legislative branches, as determined necessary by the council, or its designee. The reviews and audits may include evaluating compliance with system or application requirements, data integrity, security, controls, audit trails, backup and recovery methods, and the effectiveness and appropriateness of the system in achieving its intended purpose, as applicable.~~
8. The council, or its designee, shall monitor the implementation of information technology systems development projects and application development projects for conformance with the agency's strategic plan

and compliance with statewide policies and standards as determined necessary by the council, or its designee, and report any nonconformance or noncompliance discovered to the council or its designated committee.

9. As used in this section, "information technology" means computing and data communications systems and their supporting infrastructure used in the acquisition, processing, management, analysis, storage, and delivery of information.

³⁰¹ **SECTION 22. AMENDMENT.** Section 54-44-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44-11. Office's operating funds creation - Continuing appropriation.

1. The office of management and budget shall establish a state purchasing operating fund to be used for the procurement and maintenance of an inventory of equipment and supplies for the state departments and agencies. Funds in the state purchasing operating fund are hereby appropriated on a continuing basis and may be spent by the office of management and budget for the procurement and maintenance of an inventory of equipment and supplies as provided in this subsection. The director of the office of management and budget shall transfer any unobligated balance in the fund, in excess of one hundred twenty-five thousand dollars, to the state general fund at the end of each fiscal year.
2. The office of management and budget shall establish a state printing operating fund to be used for the procurement and maintenance of an inventory of printing equipment and supplies for the state departments and agencies.
3. ~~The office of management and budget shall establish a state information services operating fund to be used for the procurement and maintenance of data processing equipment and supplies, telecommunications equipment and supplies, and central microfilm unit equipment and supplies, and for providing data processing, telecommunication, and central microfilm unit services to state departments and agencies.~~
4. The office of management and budget shall establish a state personnel training and development operating fund to be used for the coordination of employee training and career development data, supplies, equipment, and services and for providing or arranging necessary training and development programs to state departments and agencies. Any surplus in this fund in excess of twenty-five thousand dollars on June thirtieth of each year must be transferred to the state general fund.
5. 4. Each office, agency, or institution provided with printing, ~~information services,~~ or personnel training services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of

³⁰¹ Section 54-44-11 was also amended by section 1 of Senate Bill No. 2111, chapter 470.

management and budget, based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices, agencies, and institutions must be deposited in the appropriate operating fund and must be expended in accordance with legislative appropriations.

SECTION 23. AMENDMENT. Section 54-44.6-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.6-03. State forms manager. The ~~director of the office of management and budget or an individual designated by the director~~ chief information officer of the state shall serve as the state forms manager. The manager shall administer in the executive branch of state government the forms management program established by this chapter. The program must apply efficient and economical management methods to the creation and utilization of state forms.

³⁰² **SECTION 24. AMENDMENT.** Section 54-44.8-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the individual employed by the ~~division~~ chief information officer of the state 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~~ Department" means the information ~~services division of the office of management and budget~~ technology department.
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 54-44.8-03.
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

³⁰² Section 54-44.8-01 was also amended by section 1 of House Bill No. 1122, chapter 476.

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 25. AMENDMENT. Section 54-44.8-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-02. Responsibilities of the administrator. The administrator shall oversee the ~~division's~~ department'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.

³⁰³ **SECTION 26. AMENDMENT.** Section 54-44.8-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-03. Program established - Purpose.

1. The ~~division~~ department 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.

³⁰³ Section 54-44.8-03 was also amended by section 2 of House Bill No. 1122, chapter 476.

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 54-44.8-06 and from funding made available by the ~~information services division~~ technology department from the surcharge collected pursuant to section 54-44.8-08, which are ~~hereby~~ appropriated.

SECTION 27. AMENDMENT. Section 54-44.8-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-04. Responsibilities of the ~~division~~ department. The ~~division~~ department 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 54-44.8-03 by July 26, 1993, to the extent funds generated by the surcharge described in section 54-44.8-10 are available.
3. Perform any other duties necessary to properly administer the program.

SECTION 28. AMENDMENT. Section 54-44.8-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-05. Telecommunications relay service - Requirements.

1. The ~~division~~ department shall contract with a qualified provider to design and implement a telecommunications relay service that fulfills the requirement of subsection 2 of section 54-44.8-03. The ~~division~~ department shall award the contract for this service to the offeror 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~~ department 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~~ department 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 29. AMENDMENT. Section 54-44.8-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-07. 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 54-44.8-08. Subject to legislative appropriation, the ~~division~~ department may expend moneys from the account for purposes of implementing this chapter.

SECTION 30. AMENDMENT. Section 54-44.8-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.8-08. Telephone access line and radio communications access surcharge.

1. Before May first of each year, the ~~division~~ department 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~~ department 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~~ department 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 chapter 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 chapter. 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~~ department 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 chapter. 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~~ department 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 31. AMENDMENT. Section 54-46-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-46-03. State records administrator. The ~~director~~ chief information officer of the ~~office of management and budget state~~ or an individual designated by the ~~director~~ chief information officer shall serve as the state records administrator, in this chapter referred to as the administrator. The administrator shall establish and administer in the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, retention, and final disposition of state records.

³⁰⁴ **SECTION 32. AMENDMENT.** Section 54-46.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-46.1-01. Central microfilm unit. The state records administrator shall establish and maintain a central microfilm unit and microfilm any record of any state office, agency, or department in either the executive, legislative, or judicial branch of state government, if the administrator determines the cost of such microfilming is reasonable in relation to the record's historical significance or the frequency and type of use of the record. Each office, agency, and department shall reimburse the central microfilm unit for the actual costs incurred in microfilming its

³⁰⁴ Section 54-46.1-01 was also amended by section 1 of Senate Bill No. 2411, chapter 477.

records. The administrator shall deposit moneys received under this section in the information ~~services~~ technology operating ~~fund~~ account. The administrator shall employ professional, technical, and clerical personnel as the administrator determines to be necessary to carry out the duties prescribed in this chapter and, within the limits of the legislative appropriation, shall fix the salaries of all employees within the central microfilm unit. All personnel within the central microfilm unit must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state. The administrator may perform microfilm services for any state institution and for any county, when the institution or county requests such services and the administrator agrees that the request is consistent with good records management practices.

SECTION 33. REPEAL. Chapter 54-44.2 of the North Dakota Century Code is repealed.

SECTION 34. EFFECTIVE DATE. Sections 2 and 8 take effect as provided in this section. Notwithstanding section 33, until July 1, 2000, state agencies and institutions shall continue to receive wide area network services from the department under the conditions and requirements the agencies and institutions received wide area network services from the division before August 1, 1999. With respect to state agencies and institutions, sections 2 and 8 become effective July 1, 2000, and with respect to counties, cities, and school districts, sections 2 and 8 become effective August 1, 2001.

SECTION 35. DEPARTMENT AUTHORIZATION. The information technology department may employ a business analyst to perform its responsibilities under this Act, including development of the requests for proposals for the statewide network to be established under this Act.

Approved April 20, 1999
Filed April 20, 1999

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 484

HOUSE BILL NO. 1208

(Representatives Sveen, Boucher, Froseth)

INTERNATIONAL PEACE GARDEN SUPERVISION

AN ACT to amend and reenact subsection 7 of section 55-05-02 of the North Dakota Century Code, relating to supervision of the International Peace Garden by the state parks and recreation department; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 55-05-02 of the North Dakota Century Code is amended and reenacted as follows:

7. That the ~~state historical board of the state of North Dakota~~ state parks and recreation department, as trustee for the state of North Dakota, has general supervision of the lands herein described and comprising that part of the International Peace Garden located within the state of North Dakota, and the United States of America, for the purpose of seeing that the terms of this chapter, and the trust imposed by this chapter, are complied with by the International Peace Garden, Inc., and for the purpose of cooperating with ~~such~~ that corporation in the promulgation, promotion, and development of the International Peace Garden, in accordance with the original plans and purposes for the establishment of an International Peace Garden upon the International Boundary Line between the United States and Canada for the purpose of furthering international peace among the nations of the world.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1999.

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

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 485

SENATE BILL NO. 2082

(Government and Veterans Affairs Committee)
(At the request of the Parks and Recreation Department)

STATE PARK PERMIT FEES

AN ACT to amend and reenact section 55-08-06 of the North Dakota Century Code, relating to fees for annual and daily state park permits and senior citizen discounts; and to repeal section 55-08-06.2 of the North Dakota Century Code, relating to state park entrance permits for senior citizens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-08-06. Permits for motor vehicles. Unless authorized by the director, ~~no~~ a motor vehicle may not enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of ~~such~~ the motor vehicle ~~shall display~~ displays upon request a permit issued as provided in this chapter. Permits must be of a size, form, and character as the director ~~shall prescribe~~ prescribes, and the director shall procure permits for each calendar year which by appropriate language must grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding, and used on or at any time after that date until May first of the year following the calendar year for which issued. ~~Such permits~~ Permits in each category must be numbered consecutively for each year of issue. ~~Except as provided in section 55-08-06.2 for senior citizen discounts,~~ a fee of ~~twenty~~ twenty-five dollars must be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of ~~three~~ four dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The director may authorize a discount on the sale of annual permits to any resident of North Dakota who is sixty-five years of age or older and who applies for a discount. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:

1. The director may allow other agencies or organizations that have leased state parks, state ~~recreation~~ recreational areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions ~~can~~ may be made after state park revenue bonds are issued and while ~~such~~ the bonds are outstanding.

SECTION 2. REPEAL. Section 55-08-06.2 of the 1997 Supplement to the North Dakota Century Code is repealed.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 486

SENATE BILL NO. 2264

(Senator St. Aubyn)
(Representative Dalrymple)

HISTORIC SITE ALTERATION OR DEMOLITION

AN ACT to amend and reenact section 55-10-08 of the North Dakota Century Code, relating to the authority of the state historical board and superintendent of the state historical board to prohibit the alteration or demolition of historic sites.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-10-08 of the North Dakota Century Code is amended and reenacted as follows:

55-10-08. Duties of the state and governmental subdivisions in regard to state historic sites - Historic easements - Prohibitions.

1. The state, its departments and agencies, each city, county, school district, and other body corporate and politic, are by this chapter notified of the existence of state historic sites on land and water areas in North Dakota listed in the state historic sites registry, as defined in subsection 4 of section 55-10-02.
2. ~~Neither the~~ The state ~~nor~~ or any of the instrumentalities of government enumerated in subsection 1 may not demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry, defined in subsection 4 of section 55-10-02, as a state historic site without first obtaining the prior approval thereof from the superintendent of the state historical board upon authorization of the state historical board. It is the responsibility of the state or instrumentalities of government enumerated in subsection 1 to cooperate with the state historical board in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves such demolition or alteration.
3. The state or any of the instrumentalities of government enumerated in subsection 1 may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the superintendent of the state historical board. A historic easement is:
 - a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic aspects of the property as so restored, reconstructed, or improved;

- b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided, that no right or duty in favor of or against a holder or another party having a right of enforcement arises under a historic easement before it is accepted by the holder and the acceptance is recorded;
 - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
 - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or another instrumentality of government enumerated in subsection 1;
 - e. Binding upon the holder of the servient tenement and ~~his~~ that person's successors and assigns;
 - f. Limited to a term of years provided in the grant and approved by the superintendent of the state historical board, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
 - g. Subject to no other legal limitation upon the duration of estates or of restraint on the alienation thereof, except the limitation contained in section 47-05-02.1; and
 - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.
4. A historic easement is valid even though:
 - a. It is not appurtenant to an interest in real property;
 - b. It can be or has been assigned to another holder;
 - c. It is not of a character that has been recognized traditionally at common law;
 - d. It imposes a negative burden;
 - e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
 - f. The benefit does not touch or concern real property; or
 - g. There is no privity of estate or of contract.
 5. A project comprising the acquisition of a state historic site or of a historic easement with reference thereto, and the restoration, reconstruction, and improvement of the site and buildings and structures thereon to preserve physical characteristics of historic importance, is declared to be a proper and necessary purpose for the expenditure of

public funds. The proceeds of tax increments or bonds or both may be expended by a city for such a project within an urban renewal area, when determined by the governing body to be desirable for the redevelopment, rehabilitation, and conservation of the area in accordance with the provisions of chapter 40-58.

6. If any state agency or department or a city, county, school district, or other political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historical sites registry, ~~such political subdivision~~ the objecting party may submit the objection to arbitration as provided in this subsection. Arbitration may also be demanded by either the board or ~~such political subdivision~~ the objecting party if the board or the ~~political subdivision~~ objecting party determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in such demand shall name three arbitrators. The demand must also set forth the objections which the party desires to submit to arbitration, with reference to the particular state historic site. ~~Such~~ The demand must be made within ninety days of a decision by the board. The demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and in connection therewith shall set forth in writing its response to the objections set forth in the demand served upon it and any additional objections which it desires to submit to arbitration on its part. The six arbitrators so selected shall name a seventh arbitrator. If the party proceeded against fails or refuses to name three arbitrators, the moving party may apply ex parte to the judge of the district court of the county in which the state historical site in question, or any part thereof, may be located, for the appointment of the unnamed arbitrators, and if upon the appointment of three arbitrators by each of the parties, the six so appointed have been unable to agree upon a seventh arbitrator within five days, then either party, upon five days' notice may apply to ~~such the~~ district court for the appointment of ~~such the~~ seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. A state agency may select its arbitrators from its officers or employees. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be acknowledged by the parties thereto in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of

them, must be given in writing to the ~~board or the officials~~ parties concerned and is binding upon both parties. Thereafter, the arbitration must proceed in accordance with the provisions of chapter ~~32-29.4~~ 32-29.2.

Approved March 22, 1999

Filed March 22, 1999

TAXATION

CHAPTER 487

HOUSE BILL NO. 1106

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

MYRON G. NELSON FUND REFERENCES ELIMINATED

AN ACT to amend and reenact subsection 14 of section 57-01-02 and subdivision q of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to the elimination of obsolete or incorrect references in the income tax laws relating to offers in compromise and the Myron G. Nelson Fund, Incorporated; and to repeal subdivision p of subsection 1 of section 57-38-01.2 and subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to obsolete income tax law references to the Myron G. Nelson Fund, Incorporated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 57-01-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. May waive, upon a showing of good cause, any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The attorney general shall approve the waiver. Notwithstanding the provisions of this section, if a debtor and the internal revenue service enter into an offer ~~and~~ in compromise pursuant to section 7122 of the Internal Revenue Code [26 U.S.C. 7122], as amended, the tax commissioner may reduce a debtor's individual income tax liability. However, if the federal offer ~~and~~ in compromise, for any reason, is subsequently declared void by the internal revenue service, the debtor is liable for the original amount of tax due.

³⁰⁵ **SECTION 2. AMENDMENT.** Subdivision q of subsection 1 of section 57-38-01.2 of the 1997 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~~

³⁰⁵ Section 57-38-01.2 was also amended by section 5 of Senate Bill No. 2009, chapter 31, section 20 of House Bill No. 1201, chapter 211, and section 3 of House Bill No. 1106, chapter 487.

~~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.~~

³⁰⁶ **SECTION 3. REPEAL.** Subdivision p of subsection 1 of section 57-38-01.2 and subdivision h of subsection 1 of section 57-38-01.3 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved January 27, 1999
Filed January 27, 1999

³⁰⁶ Section 57-38-01.2 was also amended by section 5 of Senate Bill No. 2009, chapter 31, section 20 of House Bill No. 1201, chapter 211, and section 2 of House Bill No. 1106, chapter 487.

CHAPTER 488

HOUSE BILL NO. 1053

(Legislative Council)
(Taxation Committee)

BEGINNING FARMER FARM BUILDING EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to application of the property tax exemption for farm buildings for beginning farmers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁷ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands. This subsection ~~shall~~ must be construed to exempt farm buildings and improvements only, and ~~shall~~ may not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence. Any structure or improvement used in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection.
- b. It is the intent of the legislative assembly that this exemption as applied to a residence ~~shall~~ must be strictly construed and interpreted to exempt only a residence ~~which~~ that is situated on a farm and which is occupied or used by a person who is a farmer and that the exemption ~~shall~~ may not be applied to property which is occupied or used by a person who is not a farmer. For purposes of this subdivision:
 - (1) "Farm" means a single tract or contiguous tracts of agricultural land containing a minimum of ten acres [4.05 hectares] and for which the farmer, actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, has ~~not~~ received ~~more than fifty percent of~~ annual net income from ~~nonfarm income~~ farming activities which is fifty percent or more of annual net income, including ~~that~~ net income of a

³⁰⁷ Section 57-02-08 was also amended by section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

- spouse if married, during ~~each~~ any of the three preceding calendar years.
- (2) "Farmer" means an individual who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state and has ~~not~~ received more than fifty percent of annual net income from nonfarm income farming activities which is fifty percent or more of annual net income, including that net income of a spouse if married, during each any of the three preceding calendar years. "Farmer" includes ~~an individual~~ a "retired farmer" who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer as defined above the residence in which the person lives and for which the exemption is claimed. "Farmer" includes a "beginning farmer" who has begun occupancy and operation of a farm within the three preceding calendar years; who normally devotes the major portion of time to the activities of producing products of the soil, poultry, livestock, or dairy farming in such products' unmanufactured state; and who does not have a history of farm income from farm operation for each of the three preceding calendar years.
- (3) "Net income from farming activities" ~~described in paragraph 2~~ means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
- (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
- (b) Interest expenses from farming activities which have been deducted in computing taxable income.
- (4) When exemption is claimed under this subdivision for a residence, the assessor may require that the occupant of the residence who it is claimed is a farmer provide to the assessor for the year or years specified by the assessor a written statement in which it is stated that fifty percent or more of the net income of that occupant, and spouse if married and both spouses occupy the residence, was, or was not, net income from farming activities; provided, that if that occupant is married and both spouses occupy the residence, it shall be stated in the written statement whether their net income from farming activities was fifty percent or more of their combined net income from all sources.
- (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. ~~The provisions of this~~ This paragraph ~~do~~ does not

apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed a retired farmer or a beginning farmer as defined in paragraph 2.

- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 9, 1999

CHAPTER 489

HOUSE BILL NO. 1054

(Legislative Council)
(Taxation Committee)

FARM BUILDING EXEMPTION

AN ACT to amend and reenact subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to application of the property tax exemption for farm buildings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁸ **SECTION 1. AMENDMENT.** Subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. a. All farm structures and improvements located on agricultural lands.
- (1) This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence.
 - (2) Any structure or improvement used primarily in connection with a retail or wholesale business other than farming, any structure or improvement located on platted land within the corporate limits of a city, or any structure or improvement located on railroad operating property subject to assessment under chapter 57-05 is not exempt under this subsection. For purposes of this paragraph, "business other than farming" includes processing to produce a value-added physical or chemical change in an agricultural commodity beyond the ordinary handling of that commodity by a farmer prior to sale.
 - (3) The following factors may not be considered in application of the exemption under this subsection:
 - (a) Whether the farmer grows or purchases feed for animals raised on the farm.
 - (b) Whether animals being raised on the farm are owned by the farmer.

³⁰⁸ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1363, chapter 490, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

activities was fifty percent or more of their combined net income from all sources.

- (5) In addition to any of the provisions of this subsection or any other provision of law, a residence situated on agricultural land is not exempt for the year if it is occupied by an individual engaged in farming who had nonfarm income, including that of a spouse if married, of more than forty thousand dollars during each of the three preceding calendar years. The provisions of this paragraph do not apply to an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.
- (6) For purposes of this section, "livestock" includes "nontraditional livestock" as defined in section 36-01-00.1.
- (7) A farmer operating a bed and breakfast facility in the farm residence occupied by that farmer is entitled to the exemption under this section for that residence if the farmer and the residence would qualify for exemption under this section except for the use of the residence as a bed and breakfast facility.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved February 5, 1999
Filed February 5, 1999

CHAPTER 490

HOUSE BILL NO. 1363

(Representatives Renner, Nicholas, Rennerfeldt)
(Senators Urlacher, Wanzek)

DEPRECIATION FOR FARM BUILDING EXEMPTION

AN ACT to amend and reenact paragraph 3 of subdivision b of subsection 15 of section 57-02-08 of the North Dakota Century Code, relating to inclusion of depreciation expenses from farming activities in net income for purposes of the farm buildings property tax exemption; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁰⁹ **SECTION 1. AMENDMENT.** Paragraph 3 of subdivision b of subsection 15 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) "Net income from farming activities" described in paragraph 2 means taxable income from those activities as computed for income tax purposes pursuant to chapter 57-38 adjusted to include the following:
 - (a) The difference between gross sales price less expenses of sale and the amount reported for sales of agricultural products for which the farmer reported a capital gain.
 - (b) Interest expenses from farming activities which have been deducted in computing taxable income.
 - (c) Depreciation expenses from farming activities which have been deducted in computing taxable income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999
Filed March 9, 1999

³⁰⁹ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1351, chapter 491, and section 11 of Senate Bill No. 2334, chapter 503.

CHAPTER 491**HOUSE BILL NO. 1351**

(Representatives Galvin, Tollefson)
(Senators Christmann, O'Connell)

ADULT DAY CARE CENTER EXEMPTION

AN ACT to amend and reenact subsection 37 of section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption for adult day care centers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁰ **SECTION 1. AMENDMENT.** Subsection 37 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37. The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation, limited liability company, or organization licensed under chapter 50-11.1 or used primarily as an adult day care center. However, this exemption is not available for property used as a residence.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999
Filed March 9, 1999

³¹⁰ Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, and section 11 of Senate Bill No. 2334, chapter 503.

CHAPTER 492

HOUSE BILL NO. 1052

(Legislative Council)
(Taxation Committee)

HOMESTEAD CREDIT INCOME LIMITATIONS

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to income limitations to qualify for the homestead credit for persons sixty-five years of age or older with limited income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.1. 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 approved by the local governing body, with an income of ~~thirteen~~ fourteen 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, ~~shall~~ is entitled to 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~~ eight thousand ~~five hundred~~ 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~~ eight thousand ~~five hundred~~ dollars and not in excess of nine thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the 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 nine thousand five hundred dollars and not in excess of ~~ten~~ eleven 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~~ eleven thousand ~~five hundred~~ dollars and not in excess of 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 twelve thousand five hundred dollars and not in excess of ~~thirteen~~ fourteen 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~~ fourteen 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 licensed physician approved by the local governing body, with an income of ~~thirteen~~ fourteen 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 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 the applicant shall~~ is entitled to receive a refund from the state general fund for that amount in excess of four percent of the person's annual income, but the refund may not be in excess of two hundred forty dollars. If the calculation for the refund is less than five dollars, a minimum of five dollars must be sent to the qualifying applicant. 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 distribute 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.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1999.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 493**HOUSE BILL NO. 1271**
(Representatives Berg, Grosz)
(Senator Lee)**ASSESSMENT INFORMATION CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to the protection of certain commercial information provided for assessment purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of information provided by commercial property owners for assessment purposes. Unless directed otherwise by judicial order or as otherwise provided by law, records and information provided by the owner or occupant of commercial property with regard to income and expenses of the property in connection with an assessment are confidential. This section does not prohibit the publication of statistics classified to prevent the identification of a particular property and information relating to that property or the disclosure of the records or information when an action or proceeding has been brought by the owner or occupant to set aside or review the assessment.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 494**HOUSE BILL NO. 1055**

(Legislative Council)
(Taxation Committee)

ASSESSMENT OF EXEMPT PROPERTY

AN ACT to amend and reenact section 57-02-14 of the North Dakota Century Code, relating to assessment of real property that is exempt from property taxation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-14 of the North Dakota Century Code is amended and reenacted as follows:

57-02-14. Valuation of real property exempt from taxation. At the time of making the assessment of real property, the assessor shall enter in a separate list each description of property exempt by law; ~~except property of the United States, or the state of North Dakota, or of any county or municipal corporation,~~ and shall value it in the same manner as other property, designating in each case to whom such property belongs and for what purpose used. This section does not apply to property of the United States, this state, or a political subdivision of this state or farm buildings or farm residences exempt from property taxes by law.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 495

SENATE BILL NO. 2052

(Legislative Council)
(Taxation Committee)

ASSESSMENT OF INUNDATED AGRICULTURAL LAND

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to the valuation and assessment of inundated agricultural land for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹¹ **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return", except for inundated agricultural land. The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.
2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
 - a. For taxable year 1998, total the annual gross returns for the most recent eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the eight. For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and

³¹¹ Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2054, chapter 496.

thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

2. b. For taxable year 1998, divide the figure arrived at in ~~subsection 4 subdivision a~~ by six. For taxable year 1999, divide the figure arrived at in ~~subsection 4 subdivision a~~ by seven. For taxable year 2000 and thereafter, divide the figure arrived at in ~~subsection 4 subdivision a~~ by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used in ~~subsection 4~~ under subdivision a of subsection 3, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.
5. The agricultural economics department of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis;_i shall compute the average agricultural value per acre [.40 hectare] for cropland and_i noncropland, ~~which is and inundated~~ agricultural land; for each county;_i and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. Before January first of each year, the tax commissioner shall provide to each county director of tax equalization these estimates of agricultural value for each county.
6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for a full growing season or more. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.
7. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the

average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.

8. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 496

SENATE BILL NO. 2054

(Legislative Council)
(Taxation Committee)

ASSESSMENT OF AGRICULTURAL LAND

AN ACT to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to inclusion of a production cost factor in the formula for valuation and assessment of agricultural land for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹² **SECTION 1. AMENDMENT.** Section 57-02-27.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02-27.2. Valuation and assessment of agricultural lands.

1. "True and full value" of agricultural lands must be their agricultural value for the purposes of sections 57-02-27, 57-02-27.1, 57-02-27.2, and 57-55-04. Agricultural value is defined as the "capitalized average annual gross return". The "annual gross return" must be determined from crop share rent, cash rent, or a combination thereof reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash or crop share basis.
2. For purposes of this section, "annual gross return" for cropland used for growing crops other than sugar beets and potatoes means thirty percent of annual gross income produced, "annual gross return" for cropland used for growing sugar beets and potatoes means twenty percent of annual gross income produced, and "annual gross return" for land used for grazing farm animals means twenty-five percent of an amount determined by the agricultural economics department of North Dakota state university to represent the annual gross income potential of the land based upon the animal unit carrying capacity of the land.
3. The "average annual gross return" for each county must be determined as follows:
4. a. ~~For taxable year 1998, total the annual gross returns for the most recent eight years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the eight.~~ For taxable year 1999, total the annual gross returns for the nine years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the nine. For taxable year 2000 and

³¹² Section 57-02-27.2 was also amended by section 1 of Senate Bill No. 2052, chapter 495.

thereafter, total the annual gross returns for the ten years immediately preceding the current year for which data is available and discard the highest and lowest annual gross returns of the ten.

- b. The agricultural economics department of North Dakota state university shall establish a base year index of prices paid by farmers using annual statistics on that topic compiled by the national agricultural statistics service for the seven-year period ending in 1995, discarding the highest and lowest years' indexes, and averaging the remaining five years' indexes. For taxable year 1999, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the nine years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining seven years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. For taxable year 2000 and thereafter, the agricultural economics department shall gather the national agricultural statistics service annual index of prices paid by farmers for the ten years ending with the most recent year used under subdivision a, discard the highest and lowest years' indexes, average the remaining eight years' indexes, and divide the resulting amount by the base year index of prices paid by farmers. This amount must be divided into the amount determined under subdivision a.
- ~~2.~~ c. For taxable year 1998, divide the figure arrived at in ~~subsection 4 subdivision b~~ by six. For taxable year 1999, divide the figure arrived at in ~~subsection 4 subdivision b~~ by seven. For taxable year 2000 and thereafter, divide the figure arrived at in ~~subsection 4 subdivision b~~ by eight.
4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross federal land bank mortgage rate of interest for North Dakota. The ten-year average must be computed from the twelve years ending with the most recent year used ~~in subsection 4~~ under subdivision a of subsection 3, discarding the highest and lowest years, and the gross federal land bank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.
5. The agricultural economics department of North Dakota state university shall compute annually an estimate of the average agricultural value per acre [.40 hectare] of agricultural lands on a statewide and on a countywide basis; 1 shall compute the average agricultural value per acre [.40 hectare] for cropland and noncropland, which is agricultural land; 1 for each county; 1 and shall provide the tax commissioner with this information by December first of each year. Fifty percent of the annual gross income from irrigated cropland must be considered additional expense of production and may not be included in computation of the average agricultural value per acre [.40 hectare] for cropland for the county as determined by the agricultural economics department. Before January first of each year, the tax commissioner shall provide to each

county director of tax equalization these estimates of agricultural value for each county.

6. Before February first of each year, the county director of tax equalization in each county shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. The estimate must be based upon the average agricultural value for the county adjusted by the relative values of lands within each assessment district compared to the county average. In determining the relative value of lands for each assessment district compared to the county average, the county director of tax equalization, wherever possible, shall use soil type and soil classification data from detailed and general soil surveys. Where such data cannot be used, the county director of tax equalization shall use whatever previous assessment data is best suited to the purpose.
7. Each local assessor shall determine the relative value of each assessment parcel within the assessor's jurisdiction and shall determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Each parcel must then be assessed according to section 57-02-27. If either a local assessor or a township board of equalization develops an agricultural value for the lands in its assessment district differing substantially from the estimate provided by the county director of tax equalization, written evidence to support the change must be provided to the county director of tax equalization.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 497

HOUSE BILL NO. 1456

(Representatives S. Kelsh, Berg, Clark, Glassheim, Winrich)
(Senator Grindberg)

NEW INDUSTRY AND IMPROVEMENTS EXEMPTION

AN ACT to amend and reenact sections 40-57.1-03, 57-02.2-02, and 57-02.2-03 of the North Dakota Century Code, relating to tax exemptions for new industries and improvements to commercial and residential buildings; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹³ **SECTION 1. AMENDMENT.** Section 40-57.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-03. Municipality's authority to grant tax exemption or payments in lieu of taxes - Notice to competitors - Limitations. After negotiation with a potential project operator, a municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations. A municipality may also grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements used in or necessary to the operation of a project that produces or manufactures a product from agricultural commodities for all or part of the sixth year through the tenth year from the date of commencement of project operations.

In addition to, or in lieu of, a property tax exemption granted under this section, a municipality may establish an amount due as payments in lieu of ad valorem taxes on buildings, structures, fixtures, and improvements used in the operation of a project ~~upon which initial construction is begun after June 30, 1994.~~ The governing body of the municipality shall designate the amount of the payments for each year and the beginning year and the concluding year for payments in lieu of taxes, but the option to make payments in lieu of taxes under this section may not extend beyond the twentieth year from the date of commencement of project operations. To establish the amount of payments in lieu of taxes, the governing body of the municipality may use actual or estimated levels of assessment and taxation or may establish payment amounts based on other factors. The governing body of the municipality may designate different amounts of payments in lieu of taxes in different years to recognize future project expansion plans or other considerations.

By November first of each year, the municipality that granted the option to make payments in lieu of taxes shall certify to the county auditor the amount of payments in lieu of taxes due under this section in the following year. After

³¹³ Section 40-57.1-03 was also amended by section 1 of Senate Bill No. 2051, chapter 368.

receiving the statement from the municipality, the county auditor shall certify the payments in lieu of taxes to the county treasurer for collection at the time when, and in the manner in which, ad valorem taxes must be certified. Upon receipt by the county treasurer of the amount of payments in lieu of taxes under this section, the county treasurer shall apportion and distribute that amount to taxing districts on the basis on which the general real estate tax levy is apportioned and distributed. The municipality may enter into a written agreement with the local school district and any other local taxing districts that wish to enter the agreement for an alternate method of apportionment and distribution. If such an agreement is entered into, the county treasurer shall apportion and distribute the money according to the written agreement. All provisions of law relating to enforcement, administration, collection, penalties, and delinquency proceedings for ad valorem taxes apply to payments in lieu of taxes under this section. However, the discount for early payment of taxes under section 57-20-09 does not apply to payments in lieu of taxes under this section. The buildings, structures, fixtures, and improvements comprising a project for which payments in lieu of taxes are allowed under this section must be excluded from the valuation of property in the taxing district for purposes of determining the mill rate for the taxing district.

Negotiations with potential project operators for tax exemption or payments in lieu of taxes must be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if the project is proposed to be located outside the corporate limits of any city. A partial exemption must be stated as a percentage of the total ad valorem taxes assessed against the property. Unless the governing body of the municipality determines that there is no existing business within the municipality for which the potential project would be a competitor, the potential project operator shall publish two notices to competitors, the form of which must be prescribed by the tax commissioner, of the application for tax exemption or payments in lieu of taxes in the official newspaper of the municipality at least one week apart. The publications must be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider the application. The municipality shall determine whether the granting of the exemption or payments in lieu of taxes, or both, is in the best interest of the municipality, and if it so determines, shall give its approval.

SECTION 2. AMENDMENT. Section 57-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-02.2-02. Improvement defined. In this chapter, unless the context or subject matter otherwise requires, the term "improvement" means the renovation, remodeling, or alteration, but not the replacement, of an existing building or structure for use for commercial or residential purposes. An improvement for residential purposes is limited to a building or structure at least twenty-five years old. An addition constructed to an existing building or structure to enlarge it ~~may not be regarded as~~ is an improvement for the purposes of this chapter.

SECTION 3. AMENDMENT. Section 57-02.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-02.2-03. Tax exemption for improvements to commercial and residential buildings and structures - Property owner's certificate. Improvements to commercial and residential buildings and structures as defined in this chapter may be exempt from assessment and taxation for up to ~~three~~ five years from the date of commencement of making the improvements, if the exemption is approved by the governing body of the city, for property within city limits, or the governing body of

the county, for property outside city limits. The governing body of the city or county may limit or impose conditions upon exemptions under this section, including limitations on the time during which an exemption is allowed. A resolution adopted by the governing body of the city or county under this section may be rescinded or amended at any time. The exemption provided by this chapter shall apply only to that part of the valuation resulting from the improvements which is over and above the assessed valuation, exclusive of the land, placed upon the building or structure for the last assessment period immediately preceding the date of commencement of the improvements. Any person, corporation, limited liability company, association, or organization owning real property and seeking an exemption under this chapter shall file with the assessor a certificate setting out the facts upon which the claim for exemption is based. The assessor shall determine whether the improvements qualify for the exemption based on the resolution of the governing body of the city or county, and if the assessor determines that the exemption should apply, upon approval of the governing body, the exemption is valid for the prescribed period and shall not terminate upon the sale or exchange of the property but shall be transferable to subsequent owners. If the certificate is not filed as herein provided, the assessor shall regard the improvements as nonexempt and shall assess them as such.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 498

SENATE BILL NO. 2100

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

TAX LAW REFERENCE CORRECTIONS

AN ACT to amend and reenact sections 23-15-01 and 57-15-01.1 of the North Dakota Century Code, relating to the removal of a reference to personal property taxes on fireworks and to delete a duplicate reference to mill levy limitations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁴ **SECTION 1. AMENDMENT.** Section 23-15-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-15-01. Fireworks defined. The term fireworks means and includes any combustible or explosive composition, or any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, daygo bombs, sparklers, or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance. Nothing in this regulation may be construed as applying to toy paper caps containing not more than twenty-five hundredths of a grain [16.20 milligrams] of explosive composition per cap.

Any person, firm, corporation, or limited liability company having operated a retail business ~~wherein merchandise was assessed by the local taxing authority, on April first immediately preceding thereto,~~ and having a retail license as provided in section 23-15-04 may offer for sale and sell at retail, to persons of twelve years of age or more, only during the period beginning June twenty-seventh and ending July fifth, both dates inclusive, the following items:

1. Star lights, with wood spike cemented in one end, total pyrotechnic composition not to exceed twenty grams each in weight (10 ball).
2. Helicopter type flyers, total pyrotechnic composition not to exceed twenty grams each in weight.
3. Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside tube diameter may not exceed three-fourths inch [19.05 millimeters].

³¹⁴ Section 23-15-01 was also amended by section 1 of Senate Bill No. 2437, chapter 238.

4. Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight.
5. Wheels, total pyrotechnic composition not to exceed sixty grams in weight, for each driver unit, but there may be any number of drivers on any one wheel. The inside bore of driver tubes may not be over one-half inch [12.7 millimeters].
6. Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight.
7. Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred grams each in weight. Pyrotechnic composition containing any chlorate may not exceed five grams.
8. Comets and shells, of which the mortar is an integral part, except those designed to produce an audible effect, total pyrotechnic composition not to exceed forty grams each in weight.
9. Soft shell firecrackers not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter, total pyrotechnic composition not to exceed fifty milligrams each in weight.
10. Whistles without report, total pyrotechnic composition not to exceed forty grams each in weight.

SECTION 2. AMENDMENT. Section 57-15-01.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-15-01.1. 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:
 - a. "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;
 - b. "Budget year" means the taxing district's year for which the levy is being determined under this section;
 - c. "Calculated mill rate" means the mill rate that results from dividing the base year taxes levied by the sum of the taxable value of the taxable property in the base year plus the taxable value of the property exempt by local discretion or charitable status, calculated in the same manner as the taxable property; and
 - d. "Property exempt by local discretion or charitable status" means property exempted from taxation as new or expanding businesses under chapter 40-57.1; improvements to property under chapter

57-02.2; or buildings belonging to institutions of public charity, new single-family residential or townhouse or condominium property, property used for early childhood services, or pollution abatement improvements under section 57-02-08.

3. A taxing district may elect to levy the amount levied in dollars in the base year. Any levy under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before determining the levy limitation under this section, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by application of the base year's calculated mill rate for that taxing district to the final base year taxable valuation of any taxable property and property exempt by local discretion or charitable status which is not included in the taxing district for the budget year but was included in the taxing district for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's calculated mill rate for that taxing district to the final budget year taxable valuation of any taxable property or property exempt by local discretion or charitable status which was not included in the taxing district for the base year but which is included in the taxing district 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 any amount permitted by subsection 3 to the amount levied under this subsection.~~
- ~~5.~~ In addition to any other levy limitation factor 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.~~ 5. Under 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 irrevocable 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.~~ 6. A school district choosing to determine its levy authority under this section may apply subsection 3 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 subsection 3 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 subsection 3.
- ~~8.~~ 7. 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 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 499

SENATE BILL NO. 2382

(Senators Mutzenberger, Krauter, Kringstad)
(Representatives Grosz, Hoffner)

SENIOR CITIZEN MILL LEVY

AN ACT to amend and reenact subsection 25 of section 57-15-06.7, subsection 26 of section 57-15-10, and subsection 3 of section 57-15-56 of the North Dakota Century Code, relating to the mill levy for senior citizen programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁵ **SECTION 1. AMENDMENT.** Subsection 25 of section 57-15-06.7 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25. A county levying a tax for programs and activities for senior citizens according to section 57-15-56 may levy a tax not exceeding ~~one mill~~ two mills.

³¹⁶ **SECTION 2. AMENDMENT.** Subsection 26 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

26. Taxes levied for programs and activities for senior citizens in accordance with section 57-15-56 may be levied in an amount not exceeding ~~one mill~~ two mills.

SECTION 3. AMENDMENT. Subsection 3 of section 57-15-56 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors of the county or city voting on the question directing the governing body to do so. The levy authorized by this section may not be increased to a levy of more than one mill under the authority of this section unless approved by a vote of a majority of the qualified electors of the county or city voting on the question. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to the governing body.

³¹⁵ Section 57-15-06.7 was also amended by section 2 of Senate Bill No. 2215, chapter 154, and section 3 of Senate Bill No. 2358, chapter 501.

³¹⁶ Section 57-15-10 was also amended by section 73 of House Bill No. 1045, chapter 50, and section 18 of House Bill No. 1201, chapter 211.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 500

HOUSE BILL NO. 1196 (Representatives Hanson, Kroeber)

ALTERNATIVE EDUCATION MILL LEVIES

AN ACT to amend and reenact subsection 1 of section 57-15-14.2 and section 57-15-17.1 of the North Dakota Century Code, relating to mill levies for alternative education programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁷ **SECTION 1. AMENDMENT.** Subsection 1 of section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

1. A school board of any school district may levy an amount sufficient to cover general expenses including the costs of the following:
 - a. Board and lodging for high school students as provided in section 15-34.2-06.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section 15-40.2-12.
 - d. Special education program as provided in section 15-59-08.
 - e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
 - f. A final judgment obtained against a school district.
 - g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.
 - h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
 - i. Unemployment compensation benefits.

³¹⁷ Section 57-15-14.2 was also amended by section 10 of Senate Bill No. 2162, chapter 169.

- j. The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States environmental protection agency and any repair, replacement, or remodeling that results from such removal or abatement and for providing an alternative education program as provided in section 57-15-17.1.
- k. Participating in cooperative vocational education programs approved by the state board.
- l. Maintaining a vocational education program approved by the state board and established only for that school district.
- m. Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses.
- n. Establishing and maintaining school library services.
- o. Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
- p. Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term.
- q. Establishing, maintaining, and conducting a public recreation system.
- r. The district's share of contribution to finance an interdistrict cooperative agreement authorized by section 15-47-40.1.

³¹⁸ **SECTION 2. AMENDMENT.** Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. Multiyear asbestos abatement and alternative education program levy by school district.

- 1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of ~~providing~~:
 - a. Providing funds for the removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement,

³¹⁸ Section 57-15-17.1 was also amended by section 11 of Senate Bill No. 2162, chapter 169.

or remodeling that results from removal or abatement of asbestos substances; and

- b. Providing alternative education programs.
2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsection 3, must be placed in a separate fund known as the asbestos abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos abatement.
3. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program, but may not be used to construct or remodel facilities used to accommodate an alternative education program.
4. Any moneys remaining in the asbestos abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos abatement project and any funds remaining in the alternative education program fund at the termination of the program must be transferred to the general fund of the school district upon the order of the school board.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 501

SENATE BILL NO. 2358

(Senators Wardner, Kinnoin, Urlacher)
(Representatives DeKrey, Froelich, Nicholas)

COUNTY AUTOMATION AND TELECOMMUNICATIONS LEVY

AN ACT to create and enact a new section to chapter 57-15 and a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to creating county levy authority for automation and telecommunications, within the levy authority for old-age and survivors' insurance; and to amend and reenact subsection 3 of section 52-09-08 and subsection 5 of section 57-15-28.1 of the North Dakota Century Code, relating to the levy limitation for old-age and survivors' insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 52-09-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The political subdivision, except a school district, a multidistrict special education board, or a center board of an area vocational and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1 or, for counties, the limitation in section 3 of this Act. Within the levy limitations set out in subsection 6 of section 57-15-28.1, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

SECTION 2. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Levy authorized for county automation and telecommunications. The county commissioners may levy an annual tax not exceeding the limitation in section 3 of this Act to provide a fund for the planning, design, acquisition, development, operation, maintenance, and support of automation and telecommunications resources.

³¹⁹ Section 52-09-08 was also amended by section 2 of House Bill No. 1070, chapter 440.

³²⁰ **SECTION 3.** A new subsection to section 57-15-06.7 of the North Dakota Century Code is created and enacted as follows:

A county levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, for an employee retirement program established by the governing body, for county automation and telecommunications under section 2 of this Act, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 2 of this Act may not exceed five mills.

SECTION 4. AMENDMENT. Subsection 5 of section 57-15-28.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A political subdivision, except a school district or county, levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, or for an employee retirement program established by the governing body, or for any combination of those purposes, may levy a tax not exceeding thirty mills.

Approved March 19, 1999

Filed March 22, 1999

³²⁰ Section 57-15-06.7 was also amended by section 2 of Senate Bill No. 2215, chapter 154, and section 1 of Senate Bill No. 2382, chapter 499.

CHAPTER 502

SENATE BILL NO. 2246

(Senators Andrist, Flakoll)
(Representatives Devlin, Kerzman, Wentz)

PROPERTY TAX RECEIPTS

AN ACT to amend and reenact sections 40-24-16, 57-20-07.1, 57-20-08, and subsection 2 of section 57-22-21 of the North Dakota Century Code, relating to property tax receipts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-24-16 of the North Dakota Century Code is amended and reenacted as follows:

40-24-16. County treasurer to certify and receipt for amount of special assessments collected - Contents of certificate - Procedure for abatement. Special assessments of any kind certified to the county auditor by the city auditor shall be paid to the county treasurer and included in the statement required by section 57-02-07.1 and the receipt required by section 57-20-08. ~~In the event that~~ If the county treasurer receives less than the full amount of taxes and special assessments due at any time on any lot or tract of real estate, ~~he the county treasurer~~ shall allocate the amount ~~of such payment received~~ between taxes and special assessments in proportion to the respective amounts of taxes and special assessments ~~which are then~~ due. When prorating any tax payment received prior to October fifteenth, the term "due", as it pertains to real estate taxes, shall include only the first installment of real estate taxes. Special assessments shall not be subject to abatement or refund by proceedings under chapter 57-23, but shall be reviewed and corrected only in the manner and upon the conditions provided in chapter 40-26. The county treasurer, at the time set by law for the payment to the city auditor of all the taxes and special assessments collected ~~by him~~ during the preceding month, shall certify the amounts of special assessments collected. The certificate shall state specifically the lot or known subdivision thereof as it appears on the tax books of the county treasurer, and the block, addition, amount collected, and the amount credited to each lot or known subdivision thereof, and the year for which the sum was collected. The certificate shall be furnished to the city auditor.

SECTION 2. AMENDMENT. Section 57-20-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-20-07.1. County treasurer to mail real estate tax statement. On or before December twenty-sixth of each year, the county treasurer shall mail a real estate tax statement to the owner of each parcel of real property at ~~his last known~~ the owner's last-known address. The statement must be provided in a manner that allows the taxpayer to retain a printed record of the obligation for payment of taxes and special assessments as provided in the statement. If a parcel of real property is owned by more than one individual, the county treasurer shall send only one statement to one of the owners of that property. Additional copies of the tax statement will be sent to the other owners upon their request, and the furnishing of their names and addresses to the county treasurer. Such tax statements must include a dollar valuation of the true and full value as defined by law of the property and the total mill levy

applicable. Failure of an owner to receive a statement will not relieve that owner of liability, nor extend the discount privilege past the February fifteenth deadline.

SECTION 3. AMENDMENT. Section 57-20-08 of the North Dakota Century Code is amended and reenacted as follows:

57-20-08. Tax receipts - ~~What to specify - Numbered consecutively - Duplicate copies filed with county auditor - Triplicate copies~~ Copies retained and filed numerically by county treasurer. Upon the payment of any tax, if directed by the board of county commissioners the county treasurer shall give to the ~~person paying the same county auditor~~ a receipt therefor showing the name and post-office address of ~~such the person who paid the tax~~, the amount and date of payment, the land, lot, or other property upon which the tax is levied, according to the description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied. If for current taxes on real estate, the receipt must have written or stamped across its face "taxes for" (giving the year in figures) or "first installment taxes" (giving the year in figures) or "second installment taxes" (giving the year in figures), as the case may be. Each year's tax must be on a separate receipt. If land has been sold for taxes, either to a purchaser or to the county, and the time for redemption from such sale has not expired, the receipt for such taxes must have written or stamped across the face "sold for taxes", with a statement of the years for which any of the real estate described therein has been sold for taxes and not redeemed. ~~The~~ If directed by the board of county commissioners, the treasurer shall ~~make triplicates of all receipts and shall return a duplicate copy~~ provide receipts at the end of each day to the county auditor, who shall file and preserve them in ~~his~~ the auditor's office charging the treasurer with the amount thereof. ~~The triplicate copy~~ A copy of each receipt must be preserved in the office of the county treasurer and filed in numerical order.

SECTION 4. AMENDMENT. Subsection 2 of section 57-22-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The county auditor shall extend to and enter upon the tax list of real estate then in the hands of the county treasurer, for the year immediately preceding, opposite the descriptions of real estate designated by the board of county commissioners which belong to the personal property tax debtor, the year for which the personal property taxes are uncollected and the amount thereof. Such entry must be made without regard to any prior payment of real estate taxes on said descriptions, and the treasurer is without authority thereafter to issue ~~to the personal property tax debtor~~ any receipt in full for said real estate taxes without making collection at the same time of the personal property taxes so extended; a taxpayer holding a specific superior lien on said descriptions ahead of personal property taxes charged thereon is entitled to tax receipts without regard to nonpayment of such inferior personal taxes.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 503

SENATE BILL NO. 2334

(Senators Fischer, Andrist, Klein)
(Representatives Devlin, Maragos, Weisz)

TAX LIENS

AN ACT to create and enact two new sections to chapter 57-20 of the North Dakota Century Code, relating to notice and preservation of tax liens; to amend and reenact sections 11-11-13, 11-13-07, 11-27-08, 15-08-19, 21-02-01, 32-31-01, 32-31-02, 32-31-03, subsection 60 of section 40-05-01, section 40-25-03, subsection 3 of section 57-02-08, sections 57-20-13, 57-22-22, 57-23-07, 57-25-01, 57-25-02, 57-25-04, 57-25-05, 57-28-01, 57-28-02, 57-28-03, 57-28-04, 57-28-05, 57-28-06, 57-28-07, 57-28-08, 57-28-09, 57-28-10, 57-28-14, 57-28-18, 57-28-19, 57-28-19.1, 57-28-22, 57-28-23, 57-29-01, 57-45-05, 57-45-11, 57-45-12, 61-01-21, 61-07-05, 61-09-15, 61-16.1-31, 61-21-52, and 61-35-87 of the North Dakota Century Code, relating to sales of property for delinquent taxes and provisions for foreclosure of tax liens for unpaid property taxes; to repeal sections 40-25-04, 40-25-05, 40-25-08, 40-25-09, 40-25-10, 57-20-24, 57-20-25, chapters 57-24, 57-26, 57-27, and section 57-28-21 of the North Dakota Century Code, relating to sales of property for delinquent taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-13 of the North Dakota Century Code is amended and reenacted as follows:

11-11-13. Board to ascertain amount of ~~redemption~~ satisfaction of tax lien money. The board of county commissioners, at the first meeting of the board each year, shall examine the county treasurer's satisfaction of tax sale lien book and stub receipts and ascertain the amount of ~~redemption~~ satisfaction of tax lien money in the treasury, and shall require the treasurer to account for the same.

SECTION 2. AMENDMENT. Section 11-13-07 of the North Dakota Century Code is amended and reenacted as follows:

11-13-07. County auditor to keep tax deed record. The county auditor shall keep a record to be known as the tax deed record in which the auditor shall enter ~~the date upon which each certificate was presented for tax deed, with~~ a description of the land ~~covered thereby~~ foreclosed for unsatisfied tax lien, the date when the notice of ~~expiration of the time for redemption~~ foreclosure of tax lien was issued ~~thereon~~, the date and description of the return of service of such notice, and the date when the tax deed is issued.

SECTION 3. AMENDMENT. Section 11-27-08 of the North Dakota Century Code is amended and reenacted as follows:

11-27-08. Board of county commissioners may set aside county tax deed lands for park purposes. The board of county commissioners may set aside and transfer to any municipality for park and recreational purposes any land which the county has acquired through tax ~~sale~~ lien foreclosure proceedings and upon which tax deeds

have been issued to the county if the land is suitable and fit for use as a public park or recreational center. The transfer may be made without consideration or for such consideration as the board deems sufficient. The board also may establish such property as a county park or attach the same to and make it a part of a county park already established. All unpaid taxes against the land shall be canceled, and the land so set aside shall be withdrawn from the list of property for sale by the county.

SECTION 4. AMENDMENT. Section 15-08-19 of the North Dakota Century Code is amended and reenacted as follows:

15-08-19. Taxation of and sale for taxes of land foreclosure of tax lien on property sold by state on deferred payment contract. ~~Lands~~ Property contracted to be sold by the state ~~are~~ is subject to taxation from the date of the contract, and the taxes assessed thereon must be collected and enforced in the same manner as taxes against other ~~lands~~ property. If the contract is not canceled or if the contract has been canceled and the period of redemption has not yet run, the ~~lands~~ property upon which taxes are delinquent ~~may be sold for taxes as other lands are sold~~ is subject to foreclosure of tax lien. After ~~the expiration of three~~ four years from the date ~~of the tax sale certificate became due~~, and after notice ~~of expiration of the period of redemption~~ foreclosure has been given as required in title 57, ~~and after expiration of the time to redeem given under such notice on the date of foreclosure~~, the ~~purchaser at the tax sale~~ county shall acquire such rights and interests as belonged to the holder and owner of the contract issued under the provisions of this chapter and only such rights. ~~The holder of the tax sale certificate may present the same, together with a certificate from the county auditor that notice of expiration of the time for redemption has been given and that no redemption has been made, to the commissioner of university and school lands, and thereupon may have his name substituted in the contract for that of the original holder and owner of the contract as the assignee of such original holder and owner, upon condition that he shall make payment of any principal or interest then in default under the contract of sale. If the lands are sold to the county for taxes, the~~ The county may assign its ~~tax sale certificate rights and interest~~ at any time, and the assignee shall have the rights given by this section to the ~~holder of a tax sale certificate issued to an individual~~ county. No tax deed may be issued upon any tax sale certificate while the legal title to the lands remains in the state of North Dakota.

SECTION 5. AMENDMENT. Section 21-02-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-02-01. Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Political subdivision" means a local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
2. "Revenues" means any of the following:
 - a. Uncollected taxes.
 - b. Amounts to be received from a distribution of federal moneys, including currently existing bureau of Indian affairs contracts.
 - c. Amounts to be received from a distribution of moneys pursuant to a state appropriation or a state statutory or constitutional provision.

3. "Uncollected taxes" means taxes for the year during which a certificate of indebtedness is issued and the preceding four years that have been levied but from which moneys have not come into the public treasury ~~either by payment or by tax sale~~ satisfaction of tax lien, exclusive of tax levies dedicated to the payment of principal of and interest on outstanding evidences of indebtedness.

SECTION 6. AMENDMENT. Section 32-31-01 of the North Dakota Century Code is amended and reenacted as follows:

32-31-01. Jurisdiction of district court in foreclosure of tax lien. In any case in which the owner of real estate has been sold at tax sale given notice of tax lien under chapter 57-20 for general taxes, for special assessments, ~~for half indemnity taxes,~~ for assessments of irrigation districts, for drain assessments, or for both general taxes and any such special taxes or assessments, the district court of the proper county shall have jurisdiction in an action in equity brought for that purpose to foreclose the lien of the delinquent taxes and assessments for which such land was ~~sold~~ noticed and to enter judgment foreclosing the same and decreeing that the same shall be sold under special execution in a manner similar to that prescribed in case of the foreclosure by action of a mortgage or other lien upon real property.

If in such action it shall appear that the taxes or assessments, ~~or the tax certificate,~~ are invalid or void by reason of noncompliance with the law, the court shall determine the true and just amount which the property attempted to be so assessed should pay to make the same uniform with other taxes and assessments for the same purpose, and judgment must be rendered and given against the property liable for such taxes or assessments without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the taxes or assessments shall have been levied, of equal force and effect as the lien of the tax or assessment, and the lien of such judgment shall be enforced by the court in such action.

SECTION 7. AMENDMENT. Section 32-31-02 of the North Dakota Century Code is amended and reenacted as follows:

32-31-02. Procedure in equity governs. The ordinary procedure in an equity case shall apply to an action brought under the provisions of this chapter. The court shall include in its decree such provision as will permit such period of redemption from execution sale as may be necessary to give to those entitled to redeem at least as long a period of redemption as they would have had if the foreclosure of tax sale lien in question had been valid in all respects and tax deed thereunder had been applied for at the earliest date permitted under statutes with reference to procuring tax deeds under ~~tax sales~~ lien foreclosures. The remedy provided by this chapter shall be cumulative and in addition to all other remedies and shall not be held to impair or detract from any other remedy provided by any other statute or statutes.

SECTION 8. AMENDMENT. Section 32-31-03 of the North Dakota Century Code is amended and reenacted as follows:

32-31-03. Action brought by whom. An action to foreclose a tax lien ~~may be brought by the purchaser at tax sale or the purchaser's successor in interest and such tax sale shall be held to have assigned, transferred, and conveyed to the purchaser and the purchaser's successors in interest the lien of the taxes included therein and all subsequent taxes paid by the purchaser or the purchaser's successors in interest.~~ In case such land, at such tax sale, was struck off to the county, such action shall be brought in the name of the county in which such real estate is situated as plaintiff,

and may be instituted by the attorney general or by the state's attorney of such county.

³²¹ **SECTION 9. AMENDMENT.** Subsection 60 of section 40-05-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60. Special improvement assessments - ~~Redemptions~~ Satisfaction. To make assessments as limited by the laws of this state for local improvements on property adjoining or benefited thereby; to collect the same in the manner provided by law; and to redeem satisfy the tax lien on lands subject to special assessments after the sale thereof for delinquent general taxes; and to accept assignments of general tax sale certificates describing lands subject to special improvement assessments.

SECTION 10. AMENDMENT. Section 40-25-03 of the North Dakota Century Code is amended and reenacted as follows:

40-25-03. Sale Foreclosure of property where if only special assessment is delinquent. ~~In case~~ If there is no delinquent general tax against any parcel of real estate and it is sold foreclosed for special assessments alone, the certificate notice of foreclosure of tax sale shall ~~lien must~~ must contain a statement to the effect that the ~~sale was foreclosure is~~ sale foreclosure is for special assessments. If the ~~sale foreclosure~~ sale foreclosure is made only for special assessments assessed by a municipality or by a taxing district other than the county, the county auditor shall ~~declare the property sold~~ issue a tax deed to the municipality or taxing district which assessed such special assessments ~~if there are no private bidders. The tax certificate and tax deed in such case shall be issued to the municipality or taxing district in the usual course of procedure.~~

³²² **SECTION 11. AMENDMENT.** Subsection 3 of section 57-02-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All property belonging to any political subdivision; ~~except that land purchased by counties at tax sales shall be taxed until the period of redemption from such tax sale has been terminated.~~

SECTION 12. AMENDMENT. Section 57-20-13 of the North Dakota Century Code is amended and reenacted as follows:

57-20-13. Negotiable paper may be accepted for taxes and fees. The county treasurer, and other officials charged with the duty of collecting public moneys, in their discretion, may accept bank checks, bank drafts, and express and post-office money orders in payment of any tax, assessment, fee, or license. Upon payment of taxes, the treasurer shall note on the tax receipt the method or manner, whether in cash, or by check, draft, or money order, and a like notation must be made on the tax list, and in case of ~~redemption~~ satisfaction of tax lien, the notation as to method

³²¹ Section 40-05-01 was also amended by section 16 of House Bill No. 1201, chapter 211.

³²² Section 57-02-08 was also amended by section 1 of House Bill No. 1053, chapter 488, section 1 of House Bill No. 1054, chapter 489, section 1 of House Bill No. 1363, chapter 490, and section 1 of House Bill No. 1351, chapter 491.

or manner of payment must be made on the auditor's satisfaction of tax sale lien record.

SECTION 13. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Treasurer to give notice of tax lien by mail. Between the first and fifteenth of November of each year, the county treasurer shall mail to each owner of any lot or tract of land for which taxes are delinquent a notice giving the legal description of that lot or tract and stating that the taxes are delinquent and constitute a lien against the property. The notice must advise the owner that unless the delinquent taxes and special assessments with penalty, interest, and costs are paid by October first of the fourth year following the year in which the taxes became delinquent, the county auditor will foreclose on the tax lien and issue a tax deed to the county.

SECTION 14. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Mistake in name of owner does not invalidate tax lien. A tax lien may not be considered invalid for the reason that the real estate has been charged in any name other than that of the rightful owner.

SECTION 15. AMENDMENT. Section 57-22-22 of the North Dakota Century Code is amended and reenacted as follows:

57-22-22. Extended personal property taxes to be collected with real estate taxes. Collection of personal property taxes entered and extended as a lien on real estate may be enforced by the sale of lands against which they are entered at any annual tax sale of such real property for taxes in the same manner as if originally charged against such lands as real estate taxes foreclosure of tax lien. The lands to be ~~sold~~ foreclosed for personal property taxes entered and extended thereon must be designated by resolution of the board of county commissioners.

SECTION 16. 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~~ If tax on any real estate remain ~~remains~~ unpaid and the property has not been sold to any purchaser other than the county after the second Tuesday in December in the year it is due, the board of county commissioners, subject to the approval of the state tax commissioner, by reason of depreciation in the value of the property or for other valid cause, may compromise with the owner of the property by abating a portion of the delinquent taxes, ~~together~~ with any penalty and interest on 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 17. AMENDMENT. Section 57-25-01 of the North Dakota Century Code is amended and reenacted as follows:

57-25-01. Application for division of property for ~~redemption~~ satisfaction of tax lien. In case a mortgage, lien, or sheriff's certificate, or any other instrument conveying an interest in property, affects only a part of the real estate taxed as a unit, any person interested therein may petition the county auditor that ~~he~~ the person be permitted to pay taxes and ~~make redemption from~~ satisfy any outstanding tax sale lien as to that part only of the real estate in which ~~he~~ the party is interested. Such petition must set forth the petitioner's interest in the property. It must be

verified and may be in the form of an affidavit. Immediately upon the receipt of such petition, the county auditor shall consider the same and shall make a fair and equitable valuation of the whole tract. ~~He~~ The county auditor shall apportion to the petitioner a part of the taxes, interest, and penalty to be paid by ~~him~~ the petitioner in order to effect ~~redemption~~ satisfaction, which must bear to the taxes, special assessments, interest, ~~and~~ and penalty, and costs accrued on the whole tract the ratio which the value of the part or parcel of land in which ~~he~~ the petitioner claims an interest bears to the value of the entire assessed tract of land. Thereupon the county auditor, by ~~registered or~~ certified mail, shall notify all persons interested in such real property according to the record, either as owner or as the holder of a mortgage or other lien or sheriff's certificate, of the filing of such petition and of ~~his~~ the auditor's assessment of such tract or parcel of land and of ~~his~~ the auditor's apportionment of the taxes thereon, and the date when the same will be considered and heard by ~~him~~ the auditor. Such hearing may not be less than ten days after the mailing of such notice. Upon the date set, the county auditor shall hear the parties interested and shall assess such tract and apportion the taxes thereon as ~~he~~ the auditor deems fair and equitable.

SECTION 18. AMENDMENT. Section 57-25-02 of the North Dakota Century Code is amended and reenacted as follows:

57-25-02. Appeal to board of county commissioners. ~~In case~~ If any interested person is dissatisfied with the determination of the county auditor as provided in section 57-25-01, ~~he~~ the person, within five days after such hearing and determination, shall file with the auditor a written request that the matter be considered by the board of county commissioners. The county auditor thereupon shall give notice, by ~~registered or~~ certified mail, to all persons having an interest of record in such land, of the date when the matter will be heard by the board. Such date may not be less than ten days after the mailing of such notice. The hearing must be held at the next regular meeting of the board of county commissioners after said ten-day period has expired. Upon the date fixed, the board of county commissioners shall hear the parties interested and shall make a division of the assessed valuation of the tract of land in question, and shall apportion the taxes thereon as said board deems fair and equitable.

SECTION 19. AMENDMENT. Section 57-25-04 of the North Dakota Century Code is amended and reenacted as follows:

57-25-04. Tax deed proceedings to be stayed. When any person files with the county auditor a petition, as provided in this chapter, that ~~he~~ the person be permitted to pay taxes, or to ~~make redemption from~~ satisfy any outstanding tax sale lien as to a part only of the real estate sold, the issuance of a tax deed thereon and all proceedings preliminary thereto must be stayed until the matter is finally determined and settled.

³²³ **SECTION 20. AMENDMENT.** Section 57-25-05 of the North Dakota Century Code is amended and reenacted as follows:

57-25-05. Procedure on payment of tax or ~~redemption~~ satisfaction of tax lien of portion of tract. Upon payment by the petitioner of the amount as finally

³²³ Section 57-25-05 was also amended by section 28 of House Bill No. 1044, chapter 51.

apportioned, a tax receipt or certificate of redemption satisfaction of tax lien, or both, as the case may be, must be issued to such petitioner by the county auditor. If there are outstanding tax certificates, the proper amount of the proceeds of such redemption must be paid to the holders of such certificates. The original certificate or certificates must be deposited with, and canceled by, the county auditor, and he shall issue in lieu thereof a tax sale certificate, which must be entitled "substitute tax sale certificate", and which must be in substantially the following form:

~~—SUBSTITUTE TAX SALE CERTIFICATE~~

I, _____, auditor of the county of _____ in the state of North Dakota, do hereby certify that the following described real estate situated in said county and state to wit: _____, together with other real estate, on the _____ day of _____, 19____, was sold by me in the manner provided by law for the delinquent taxes thereon for the year _____ to _____, he being the bidder who agreed to accept the lowest rate of interest thereon from the date of sale upon the amount of taxes, penalties, and interest paid by him, that the rate of interest which said purchaser agreed to accept was _____ percent per annum, that thereafter redemption was made from said tax sale of a portion of the real estate then sold to said purchaser, that redemption of the above described real estate was not made, and I further certify that unless redemption of such real estate is made in the manner provided by law the said _____ or his assigns will be entitled to a deed of the property above described on and after the _____ day of _____, 19____, on the surrender of this certificate, and I further certify that there remains due and unpaid upon this certificate the sum of \$_____ together with interest thereon at _____ percent per annum from _____ day of _____, 19____.

In witness whereof I have hereunto set my hand and the seal of the county auditor of said county this _____ day of _____, 19____.

County Auditor of _____ County

Such substitute certificate has the same force and effect as the original certificate as to property covered thereby. The county treasurer and county auditor shall make the proper entries in the tax records of their offices showing the payment of the taxes and the cancellation of the original certificate and the issuance of the substitute tax certificate.

SECTION 21. AMENDMENT. Section 57-28-01 of the North Dakota Century Code is amended and reenacted as follows:

57-28-01. Notice of expiration of period of redemption foreclosure of tax lien to be given. On or before June first in each year, the county auditor shall give notice of the expiration of the period of redemption foreclosure of tax lien for all property for which three four or more years have passed since the tax sale certificates were issued or deemed to have been issued to the county, which have not been redeemed or assigned became due.

SECTION 22. AMENDMENT. Section 57-28-02 of the North Dakota Century Code is amended and reenacted as follows:

57-28-02. When redemption period expires tax lien is foreclosed. The period of redemption for property bid in by the county expires on tax lien foreclosure date

is October first after the service of the notice of the expiration of the period of redemption foreclosure.

SECTION 23. AMENDMENT. Section 57-28-03 of the North Dakota Century Code is amended and reenacted as follows:

57-28-03. Contents of notice of expiration of period of redemption tax lien. Notice of the expiration of the period of redemption foreclosure of tax lien must include:

1. The description of the property.
2. ~~The amount for which the property was sold at tax sale.~~
3. ~~The amount of delinquent property taxes and special assessments, with penalties and interest, and foreclosure costs, for each year the tax year foreclosed.~~
4. ~~The amount of delinquent special assessments, with penalties and interest, for each year.~~
5. 3. The total amount required to redeem the property from tax deed proceedings, not including costs yet to accrue satisfy the property tax lien.
6. 4. The time when the redemption period will expire foreclosure will occur.

SECTION 24. AMENDMENT. Section 57-28-04 of the North Dakota Century Code is amended and reenacted as follows:

57-28-04. Service of notice of the expiration of the period of redemption foreclosure of lien. ~~The county auditor shall serve the notice of the expiration of the period of redemption for property sold to the county for taxes in the manner prescribed in subsections 2 through 6 of section 57-27-02.~~

1. If the current assessment records show that a residential building is located on the property, the county auditor shall deliver the notice of foreclosure of tax lien to the sheriff who shall serve it or cause it to be served personally upon the owner, if known to be a resident of this state. If the owner is a nonresident of this state, the county auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address and determine whether personal service upon any person is required under subsection 3. If the current assessment records show that no residential building is located on the property, the auditor shall serve the notice by certified mail addressed to the owner at the owner's last-known post-office address.
2. By March first, the county auditor shall request from the register of deeds and the clerk of the district court 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 served from the surface estate before 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 lien relates, upon whom the notice of foreclosures must be served. The register of deeds and the clerk of the

district court shall provide the county auditor with the requested lists by April fifteenth following the request.

3. The notice must be served personally upon any person actually residing upon the property subject to tax lien and upon any tenant or other person entitled to the possession of the property as may appear from the records of the register of deeds.
4. The county auditor shall serve the notice of foreclosure of tax lien 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 served 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 notice of foreclosure of tax lien 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 certified mail.
5. The expense of service of the notice, publication, and other foreclosure costs under this chapter in the amount of fifty dollars must be added to the amount required to satisfy the tax lien. The auditor or sheriff shall make proof of service by mail by affidavit showing the names and addresses of all parties upon whom the notice was served with the date of mailing in each case and shall attach the registry, certification, and return receipts and file the affidavit and receipts with the original notice of foreclosure of tax lien. Service by publication under this chapter must be shown of record by filing of an affidavit of publication.

³²⁴ **SECTION 25. AMENDMENT.** Section 57-28-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-05. Form of notice ~~for~~ of foreclosure of tax lien service by certified mail.

The notice of ~~the expiration of the period of redemption~~ foreclosure of tax lien which the county auditor is required to serve by certified mail must be substantially in the following form:

~~NOTICE OF EXPIRATION OF PERIOD OF REDEMPTION~~ FORECLOSURE
OF TAX LIEN

To _____, the owner of the record title of the real estate hereinafter described, and to all mortgagees, lienholders, and other persons interested in said real estate:

I, _____, county auditor of _____ County, North Dakota, hereby give notice that the real estate hereinafter described; ~~at the annual tax sale held in the county on the _____ of December, 19____, was offered for sale~~ has a lien for delinquent taxes against it for the year _____ and ~~was sold to the county, that subsequent tax sale certificates have been issued to the county for the years hereinafter set forth, that more than three years have expired since the date of~~

³²⁴ Section 57-28-05 was also amended by section 33 of House Bill No. 1044, chapter 51.

each of said tax sale certificates, that no redemption has been made therefrom, and that the same still are the property of such county, and unless redemption is made from each of said tax sale certificates and special assessments, with interest, penalties, and cost of foreclosure action are paid on or before October first, after the date of this notice, tax deeds will be issued to the county, granting to and vesting in it, the absolute title in fee to said real property, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and foreclosing all rights of redemption, and all other rights of the owner, mortgagees, lienholders, and other persons interested therein, as may appear from the records of the register of deeds and the clerk of the district court of said county. There is given herewith the description of such parcels of real estate, and set opposite each description is the amount which will be required upon the date of the expiration of the period of redemption to redeem such real estate from such original and each subsequent tax sale certificate issued to the county, exclusive of the cost of service of this notice to satisfy the tax lien for the year _____.

Said property is described as follows, with the amount required to redeem satisfy the tax lien set out opposite each description, to wit:

Given pursuant to authority of law this _____ day of _____, 19__.

County auditor of _____ County, North Dakota.

SECTION 26. AMENDMENT. Section 57-28-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-06. Service of notice by publication. The county auditor shall serve notice of ~~the expiration of the period of redemption~~ foreclosure by publication as to all property ~~sold to the county for taxes~~ for which notice is served upon the owner by certified mail. The notice may include any number of parcels of property and only one heading is necessary for the entire list. The notice must contain the description and any street address of each parcel of property. However, the failure to include the street address in the notice does not affect the validity of the notice. ~~The notice must include a statement of the cost of publication of the notice.~~ The notice must be published once on or before August first in the official newspaper of the county.

³²⁵ **SECTION 27. AMENDMENT.** Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption to be served by publication must be substantially in the following form:

I, _____, county auditor, of _____ County, North Dakota, hereby do give notice that the real estate hereinafter described ~~was sold to the~~

³²⁵ Section 57-28-07 was also amended by section 34 of House Bill No. 1044, chapter 51.

county at the annual tax sale on December _____, 19___, for has a lien for delinquent taxes; that subsequent tax sale certificates have been issued to the county, that more than three years have expired since the date of each of said tax sale certificates, that no redemption has been made therefrom, that the same still are the property of this county against it for the year _____, and that unless redemption shall be made from such tax sale and special assessments, with interest, penalties, and cost of foreclosure action are paid, on or before October first after the date of this notice, the same will become the absolute property in fee of this county, subject, however, to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner thereof, mortgagees, lienholders, and other persons interested therein will be forever foreclosed and barred from asserting any further rights to such real estate whatsoever. The following is a list of the real estate sold at such tax sale on which the period of redemption will expire tax lien will be foreclosed on October first. Opposite each description of such real estate appears any street address of the property, the name of the owner of the record title thereof, and the amount which must be paid to redeem from such tax sale before the period of redemption expires satisfy the tax lien. Said sum includes the amount for which said land was sold, together with subsequent delinquent taxes for _____ and prior years, and interest, penalties, and cost of service. (List descriptions, names of owners, and amount necessary to redeem satisfy the tax lien.)

Given pursuant to authority of law this _____ day of _____, 19__.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 28. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

57-28-08. Effect of failure to redeem satisfy tax lien. The failure of the owner, any mortgagee, or other lienholder to redeem property bid in by the county satisfy the tax lien before the period of redemption expires operates date of foreclosure shall:

1. ~~To pass~~ Pass any interest of the owner, mortgagee, or lienholder in the property to the county. The interest acquired by the county is subject only to the lien for 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 foreclosure of tax lien.
2. ~~To foreclose~~ Foreclose all rights of redemption satisfaction.
3. ~~To waive~~ Waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, except jurisdictional defects.

SECTION 29. AMENDMENT. Section 57-28-09 of the 1997 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 date of foreclosure for property that was sold to the county for taxes, and which has not been assigned or redeemed with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county, or in cases in which the state

engineer has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state. The tax deed passes the property in fee to the county or the state, 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~~ foreclosure of tax lien and except for a homestead credit for special assessments lien provided for in section 57-02-08.3. While the county or the state 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 or the state 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 30. AMENDMENT. Section 57-28-10 of 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~~ foreclosure of tax lien, 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 31. AMENDMENT. Section 57-28-14 of the North Dakota Century Code is amended and reenacted as follows:

57-28-14. Notice of annual sale - Contents. Notice of the annual sale must include a description, any street address, and minimum sale price for each parcel of property to be sold. Notice must be given in both of the following manners:

1. By posting a notice at the ~~front door of the courthouse~~ county auditor's office at least fifteen days before the date of sale.
2. By publishing a notice in the official newspaper of the county once, not less than ten days before the date of sale.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 32. AMENDMENT. Section 57-28-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-28-18. Terms of private sale ~~and redemption~~ and distribution of proceeds. Any private sale of real property made between the annual November sales must be made upon the same terms and conditions as a sale may be made at the November sale. The sale ~~of redemption~~ of farmland acquired by the county by tax deed is subject to any existing lease of the property for the year of the sale ~~of redemption~~. If the farmland is to be sold by private sale to any person other than the former owner or other interested person, a deed or contract for deed may not be delivered to the purchaser until thirty days after service by certified mail upon the former owner or other interested party of the pending sale, the date when the sale will

become final, and the amount required to ~~redeem~~ repurchase the property. For the purposes of this section, "other interested party" means the executor, administrator, parent, spouse, or child of the former owner who has notified the county auditor in writing of that status, the address at which service may be made, and that the person should be notified of the expiration of the period of ~~redemption~~ repurchase in connection with any private sale of the property.

In case of the sale, contract for sale, or ~~redemption~~ repurchase by the former owner of tax deed property during January, the property must be assessed and taxed for that year, and the purchaser or ~~redemption~~ repurchaser is entitled to the rental and landlord's share of crops on the property for the year. In case of the sale, contract for sale, or ~~redemption~~ repurchase by the former owner of tax deed land after January, the property must not be assessed and taxed for that year, and the county is entitled to the rental and landlord's share of the crops on the property for the year. The proceeds realized from a sale between annual November sales must be apportioned in the same manner as the proceeds of the annual November sale.

SECTION 33. AMENDMENT. Section 57-28-19 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19. Rights of repurchase. The former owner; the former owner's executor or administrator; or any parent, spouse, or child of the former owner may repurchase any property forfeited to the county under tax deed proceedings, so long as the tax title to the property remains in the county. If any city has made a special assessment for public improvements against the property and the special assessment has become delinquent and remains unpaid, the city has a right to purchase the property for cash, at the appraised value, prior to that of any party. Upon appraisal of the property, the county auditor shall give notice to the auditor of any such city and the city has thirty days within which to exercise its priority right to purchase the property under this section. A repurchase by a private party under this section may be for cash or contract for deed made by and between the board of county commissioners and the former owner; the executor or administrator of the former owner; or any parent, spouse, or child of the former owner. The consideration of the repurchase contract with a private party must include:

1. The total amount required to be paid to effect a ~~redemption~~ satisfaction of tax lien.
2. The total amount of all subsequent taxes and special assessments with interest, penalties, and costs.

If the fair market value of the property at the time of the repurchase is less than the amount to be paid under subsections 1 and 2, the board shall fix a fair sale price for the property. If a repurchase under this section is by contract for deed, the party making the repurchase must pay at least twenty-five percent of the total contract price in cash and the remainder must be payable in no more than ten annual equal installments. The board of county commissioners shall establish the rate of interest for a contract for deed under this section, not exceeding the prime rate of interest established by the Bank of North Dakota for the month immediately preceding the month in which the contract was entered. A contract for deed under this section must provide that if the repurchaser or the successor in interest fails to pay one or more of the installments when due, with interest, the board of county commissioners may cancel the contract and all payments and improvements made by the repurchaser or the successor in interest will be forfeited to the county as liquidated damages for breach of contract unless otherwise expressly provided. Upon the completion of a cash sale or payments under a contract for deed under this section,

the county auditor shall execute and deliver a deed conveying to the repurchaser the entire interest of the county in the property. Upon the execution and delivery of a deed or contract for deed under this section, the property becomes taxable to the repurchaser. In case of repurchase or contract for repurchase of tax deed property during January, the property must be assessed and taxed for that year, and the repurchaser is entitled to the rental and landlord's share of crops on the property for the year. In case of the repurchase or contract for repurchase of tax deed land after January, the property must not be assessed and taxed for the current year, and the county is entitled to the rental and landlord's share of crops on the property for the year. The repurchase or contract for repurchase of tax deed farmland is subject to any existing farm lease of the property for the year in which the repurchase or contract for repurchase is made.

SECTION 34. AMENDMENT. Section 57-28-19.1 of the North Dakota Century Code is amended and reenacted as follows:

57-28-19.1. Real estate sold to city or acquired by the county by tax deed to be marketable. A city that has purchased property or a county that has acquired a tax deed to property under this chapter is deemed to have marketable record title to the property if all of the following apply:

1. The county deed conveying the property has been recorded.
2. The city or county has entered into possession of the property and continued its possession for three months or longer.
3. No lis pendens giving notice of the pendency of an action challenging the validity of tax proceedings or of the deed has been recorded within three months of the date on which the city or county entered into possession of the property.

A city or county that is deemed to have marketable record title may convey title free of any claims based on a defect in the process through which the city or county obtained title to the property. If title of the city or county is deemed marketable under this section, a claimant who would be entitled to some claim on the property because of a defect in the process by which the city or county obtained title has instead the right to recover from the city or county the net value of that claim, subject to the statutory restrictions on claims against a city or county. For the purpose of this section, the fact of possession by the city or county may be shown of record by one or more affidavits that contain the legal description of the property and show that the city or county entered into possession of the property and continued possession for three months or longer. The posting on the property of a sign or notice, legible from the street adjacent to the property, stating that the property is owned or for sale by the city or county is an act of possession by the city or county, but is not required.

SECTION 35. AMENDMENT. Section 57-28-22 of the North Dakota Century Code is amended and reenacted as follows:

57-28-22. Sale of city lots property owned by county more than ten years. The board of county commissioners may sell property acquired by the county at tax sale or by foreclosure of tax lien more than ten years ago without further notice ~~of the expiration of the time of redemption from the tax sale~~ if all of the following apply:

1. ~~The property is within an addition to the city which has been platted into lots for more than thirty years.~~
2. ~~No streets, sidewalks, or other improvements have been made in the addition.~~
3. ~~More than ten years have elapsed since the tax sale at which the county acquired the property.~~
4. ~~The property has remained under ownership of the county.~~
5. ~~No taxes have been paid on the property since the county acquired ownership.~~

SECTION 36. AMENDMENT. Section 57-28-23 of the North Dakota Century Code is amended and reenacted as follows:

57-28-23. County lands may be leased. The board of county commissioners may lease any property acquired by the county by tax deed. A mineral lease in farmland acquired by the county by tax deed may not be entered until thirty days after giving the former owner or other interested party notice of the right to ~~redeem~~ repurchase the property from tax ~~sale~~ lien foreclosure in the manner provided in section 57-28-18.

SECTION 37. 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 of North Dakota or any of its agencies, departments, or instrumentalities, prior to the taking effect of this code, has acquired, or thereafter acquires, title to any tract of land 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 are without power to enforce or to effectuate the same. All remedies for the enforcement or enjoyment of the liens or titles are suspended wholly and all proceedings to enforce or effectuate the liens or titles subsequent to the acquisition of the tract of land by the state of North Dakota or any of its agencies, departments, or instrumentalities and during the time the tract is owned by the state of North Dakota or any of its agencies, departments, or instrumentalities, are null and void, except that any tax title acquired previous to the acquisition of title by the state of North Dakota or any of its agencies, departments, or instrumentalities may be made effectual and may be enjoyed until the time the 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 are suspended forthwith, and the 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 38. AMENDMENT. Section 57-45-05 of the North Dakota Century Code is amended and reenacted as follows:

57-45-05. Officer's refusal to perform duty - Penalty. Every officer or employee of any political subdivision of this state who in any case knowingly refuses to perform any duty enjoined upon ~~him~~ the officer or employee by any provision in

this title, or who consents to or connives at any evasion of the provisions of this title whereby any proceeding is prevented or hindered, is guilty of malfeasance in office, and is subject to removal from office. Any person aggrieved by the failure of any officer or employee to perform ~~his~~ the officer's or employee's duties as provided in this title may file a complaint under section 12.1-11-06. In addition, the state's attorney or any aggrieved party may proceed to obtain a writ of mandamus to compel performance by such officer or employee. Any failure of an officer or employee to do any act at the particular time specified in this title in no manner invalidates any tax levy, or any ~~certificate of tax sale~~ foreclosure of tax lien, or tax deed.

SECTION 39. AMENDMENT. Section 57-45-11 of the North Dakota Century Code is amended and reenacted as follows:

57-45-11. Limitation of action against tax deed. Any person having or claiming title to or a lien or encumbrance upon any land, whether in ~~his~~ that person's possession or the possession of another, or vacant or unoccupied, may commence and maintain an action against any person, county, or state claiming any title to or interest in such lands, or a lien upon the same, adversely to ~~him~~ the person by or through any ~~tax sale, tax certificate, or~~ tax deed, to test the validity of the tax sale, tax certificate, or tax deed, or to quiet the title to said land as against the claims of such adverse claimant, or to remove the cloud from the title arising from such ~~tax sale, tax certificate, or~~ tax deed. No action nor defense based upon the invalidity of any such ~~tax sale, tax certificate, or~~ tax deed may be commenced or interposed after three years from the issuance of a tax deed unless such ~~tax sale, tax certificate, or~~ tax deed is void by reason of jurisdictional defects. The ~~purchaser at any tax sale or the holder of any tax certificate or tax deed may maintain an action to establish the validity thereof or to quiet title to said lands, and if he is the holder of a tax deed he may demand the possession of such lands.~~

SECTION 40. AMENDMENT. Section 57-45-12 of the North Dakota Century Code is amended and reenacted as follows:

57-45-12. Procedure when taxes or tax sales lien foreclosures are declared invalid. When any ~~sale foreclosure~~ of land for taxes is adjudged to be void, the judgment must state the reason why it is void. In all such cases, and in cases where by the mistake or wrongful act of the county treasurer or auditor, land has been ~~sold~~ foreclosed upon which no taxes were due, and in cases where taxes have been or may be paid on lands not subject to taxation, or on lands where subsequent to payment the entry has been or may be canceled, the money so paid and all subsequent taxes, penalties, and costs which have been or which may be paid must be refunded, with interest at seven percent per annum from the date of payment to the person making such payment, ~~his~~ the person's heirs or assigns, and the same must be refunded out of the county treasury to which such money was paid, on an order from the county auditor. A pro rata share of the money so refunded must be charged to the state and to any city, township, school district, or other taxing district which may have received any part of such void tax. Whenever any ~~sale of land or certificate or~~ tax deed made and delivered under this title is adjudged to be void, unless the judgment declares the tax to be illegal, the tax and all subsequent taxes ~~returned to the purchaser or assignee~~ shall remain and be a lien upon the land ~~sold~~, and the county auditor shall ~~advertise and resell the same at the next succeeding annual sale~~ serve notice of foreclosure of tax lien on the following October first pursuant to chapter 57-28 for the full amount of taxes, penalties, and costs due thereon.

SECTION 41. AMENDMENT. Section 61-01-21 of the North Dakota Century Code is amended and reenacted as follows:

61-01-21. Sale Foreclosure of property where when only special assessment is delinquent. ~~In case~~ If there are no delinquent general taxes against any parcel of real estate and it is ~~sold~~ foreclosed for special assessments ~~levied pursuant to the provisions of~~ under this title, the ~~certificate~~ notice of foreclosure of tax sale lien shall contain a statement to the effect that the ~~sale was~~ foreclosure is for special assessments. If the ~~sale foreclosure~~ is made only for special assessments levied by a municipality or by a taxing district other than the county, the county auditor shall ~~declare the property sold~~ issue a tax deed to the municipality or taxing district which levied such special assessments ~~if there are no private bidders.~~ The tax certificate and tax deed in such case shall be issued to the municipality or taxing district in the usual course of procedure.

SECTION 42. AMENDMENT. Section 61-07-05 of the North Dakota Century Code is amended and reenacted as follows:

61-07-05. Purchase of land at tax sale - Assignment of tax sale certificates after foreclosure of tax lien. When the board shall deem it necessary to protect the interests of the district, or of the electors thereof, or to protect the interests of bondholders or other creditors of the district, it, if funds are available for that purpose, may purchase ~~at tax sale,~~ land within the district ~~sold,~~ after foreclosure by the county for unpaid and delinquent taxes; ~~or it may purchase an assignment of any tax sale certificate from the county and may acquire, own, and sell any lands thus acquired.~~

SECTION 43. AMENDMENT. Section 61-09-15 of the North Dakota Century Code is amended and reenacted as follows:

61-09-15. Assessment made to be general tax - When due and delinquent - Tax sale lien to be preferred lien. All assessments made pursuant to the provisions of this chapter on real property, and assessments on leasehold estates owned by this state or any of its subdivisions, and, to the extent provided by the act of Congress of August 11, 1916, assessments on entered or unentered public lands, shall be a general tax against the real property on which assessed in like manner and to the same effect as general state and county taxes and shall be of the same order. The lien thereof shall share ratably with general tax liens in all tax proceedings and tax ~~sales~~ lien foreclosures, and shall be subject to all provisions of law relating to general taxes. Such assessment shall become due and payable and delinquent at the same time as other general state and county taxes; ~~and at the annual tax sale the said assessment shall be included in the total amount of taxes for which the property affected is being offered for sale, and such property, in the absence of other bidders, shall be sold to the county.~~ A tax sale certificate therefor may issue to the county lien foreclosure and shall remain subject to all statutory provisions applying to tax sale certificates issued to a county lien foreclosure. In case leasehold estates only are affected by said assessments the ~~tax sale certificate issued therefor~~ lien foreclosure notice shall state that fact. The lien for the bonds of any series shall be preferred to that of any subsequent series, and the lien for the payments due to the United States under any contract between the district and the United States, accompanying which bonds have not been deposited with the United States, shall be a lien preferred over that of any issue of bonds or any series of any issue subsequent to the date of such contract. All funds arising from assessment and levy, if any, shall be devoted to the obligations of the district payable from said funds and as to all obligations from the bond and United States contract a fund shall be so devoted in the order of priority of the creation of the obligation. No error or omission which may be made in the

proceedings of the board, or of any officer of an irrigation district in referring, reporting upon, ordering or otherwise acting concerning the establishment, construction, or acquisition of irrigation works, or concerning the issuance of bonds or improvement warrants, or in making or certifying any assessment shall vitiate or in any way affect any such assessment; but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. Whenever the validity of any assessment, or the validity of any ~~tax sale certificate or deed~~ given pursuant to a sale foreclosure of tax lien for such assessment shall be drawn in question in any action in any district court in this state, and such assessment shall be held to be invalid by reason of noncompliance with the laws of this state, the court shall determine the true and just amount which the property attempted to be so assessed by said assessment should pay, to make the same uniform with other assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the property liable for such assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which the assessment shall have been levied, of equal force and effect as the lien of irrigation district assessments, and the lien of such judgment shall be enforced by the court in such action.

SECTION 44. AMENDMENT. Section 61-16.1-31 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-31. Sale Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter shall become due and delinquent and shall be subject to penalties and nonpayment at the same date and rates as first installments of real estate taxes: ~~Real property shall be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale shall be made by the same officer making the sale as in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, shall be advertised and sold together in one sum and one certificate shall be issued therefor.~~

~~If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there shall be no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale shall cover both general taxes and special assessments which are delinquent.~~

If there is no delinquent general property tax against a tract or parcel of land and it is ~~sold foreclosed~~ for special assessments alone, the ~~certificate of tax sale notice of foreclosure of tax lien~~ shall state that the sale was foreclosure is for special assessments and; ~~if there is no private bidder the tax sale certificate and a tax deed~~ in such case shall be issued in the usual course of procedure.

SECTION 45. AMENDMENT. Section 61-21-52 of the North Dakota Century Code is amended and reenacted as follows:

61-21-52. Lien for and enforcement of drain assessments. Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city shall be served on the auditor thereof promptly following completion. The assessment list shall then be filed in the office of

the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected, the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This chapter shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced: ~~The affected real property shall be sold to enforce the collection of drain assessments which have become delinquent at the same time and in the same manner as is provided in title 57 for the sale of real property for delinquent general taxes. The sale shall be made by the same officer, upon like notice, subject to redemption and on like record as a sale of real property for delinquent general taxes. If property to be sold is subject to sale for general taxes and also for drain assessments, such property shall be advertised and sold for the total due for both general taxes and drain assessments and one certificate shall issue. If there are no bids for real estate so offered for sale, the county auditor shall sell the same to the county and shall issue one certificate of sale therefor. If the property to be sold is not subject to sale for general taxes it may be sold for drain assessments alone and a certificate of sale for such assessments shall issue to the proper board, unless sale is made to a private bidder. The board may purchase from the county any unassigned tax certificates against property sold to the county for general taxes and for drain assessments made by the board or its predecessor. Assignments of such certificates shall be on the terms provided for assignments to individuals except that the amounts of drain assessments shall not be collected. If no redemption satisfaction of tax lien is made, the affected property shall pass absolutely to the board on expiration and termination of the time for redemption foreclosure of tax lien provided the board pays the amount for satisfaction of lien, except the amounts of drain assessments, and may thereafter be sold by the board at public sale. The governing body of each city against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges, and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.~~

SECTION 46. AMENDMENT. Section 61-35-87 of the North Dakota Century Code is amended and reenacted as follows:

61-35-87. Sale Foreclosure of tax lien on property when general and special assessment taxes are delinquent. Special assessments imposed under this chapter become due and delinquent and are subject to penalties for nonpayment at the same date and rates as first installments of real estate taxes: ~~Real property must be sold to enforce the collection of special assessments or installments of special assessments which have become delinquent at the same time and in the same manner as provided in title 57. The sale must be made by the same officer making the sale as~~

in the case of the sale of real property for general taxes. Delinquent general taxes and delinquent special assessments, or installments thereof, must be advertised and sold together in one sum and one certificate of sale must be issued therefor.

If real estate is sold for both delinquent general taxes and delinquent special assessments or installments of special assessments and there are no bidders, the county auditor shall strike off the parcel of land to the county and one certificate of sale covers both general taxes and special assessments that are delinquent.

If there is no delinquent general property tax against a tract or parcel of land and it is ~~sold~~ foreclosed for special assessments alone, the ~~certificate of tax sale~~ notice of foreclosure of tax lien must state that the ~~sale was~~ foreclosure is for special assessments and, ~~if there is no private bidder the tax sale certificate and a tax deed~~ in such case must be issued in the usual course of procedure.

³²⁶ **SECTION 47. REPEAL.** Sections 40-25-04, 40-25-05, 40-25-08, 40-25-09, 40-25-10, 57-20-24, 57-20-25, chapters 57-24, 57-26, 57-27, and section 57-28-21 of the North Dakota Century Code are repealed.

SECTION 48. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998. Property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 1999 are subject to provisions of law that were in effect December 31, 1998.

Approved March 16, 1999
Filed March 16, 1999

³²⁶ Section 57-28-21 was amended by section 1 of House Bill No. 1117, chapter 505.

CHAPTER 504**HOUSE BILL NO. 1342**
(Representatives Delzer, Belter)
(Senators Freborg, B. Stenehjem)**NATURAL DISASTER TAX ABATEMENT**

AN ACT to amend and reenact subdivision g of subsection 1 of section 57-23-04 of the North Dakota Century Code, relating to the abatement of ad valorem taxes when property is destroyed or damaged by a natural disaster; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision g of subsection 1 of section 57-23-04 of the North Dakota Century Code is amended and reenacted as follows:

- g. When any building, mobile home, structure, or other improvement has been destroyed or ~~injured~~ damaged by fire, flood, ~~or~~ tornado, or other natural disaster the abatement or refund must be granted only for that part of the year remaining after the property was damaged or destroyed.

SECTION 2. EFFECTIVE DATE. This Act is effective for all taxable years beginning after December 31, 1998.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 505**HOUSE BILL NO. 1117**

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

OMB TAX CANCELLATION NOTICE ELIMINATED

AN ACT to amend and reenact section 57-28-21 of the North Dakota Century Code, relating to notice to the office of management and budget of cancellation of real property taxes and special assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁷ **SECTION 1. AMENDMENT.** Section 57-28-21 of the North Dakota Century Code is amended and reenacted as follows:

57-28-21. Cancellations from record. After any real estate has been sold and a deed has been delivered to the purchaser, the board of county commissioners shall direct by resolution the cancellation from the record of all general taxes and special assessments remaining of record against the property at the date of sale, except installments of special assessments that had not become due at the date of the sale. The county auditor shall immediately ~~send a copy of the resolution to the state office of management and budget and~~ notify the county treasurer of the cancellation.

Approved March 9, 1999
Filed March 9, 1999

³²⁷ Section 57-28-21 was repealed by section 47 of Senate Bill No. 2334, chapter 503.

CHAPTER 506

SENATE BILL NO. 2101

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

TELECOMMUNICATIONS TAX DEPOSIT AND DISTRIBUTION

AN ACT to amend and reenact subsection 2 of section 57-34-03 and section 57-34-05 of the North Dakota Century Code, relating to deposit and distribution of the telecommunications carriers tax; to provide a continuing appropriation; to provide a transfer; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁸ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A telecommunications carrier's customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated from the telecommunications carriers tax fund as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 2. AMENDMENT. Section 57-34-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation. Net gross receipts tax revenues of up to eight million four hundred thousand dollars per taxable year under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. Net gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars in a taxable year must be deposited in the state general fund. For purposes of this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any refunds paid under section 57-34-03. The tax commissioner shall allocate ~~net gross receipts tax revenues~~ moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed

³²⁸ Section 57-34-03 was also amended by section 43 of Senate Bill No. 2015, chapter 37.

property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. Gross receipts tax revenues of The balance of the telecommunications carriers tax fund, not exceeding eight million four hundred thousand dollars per taxable year are, is appropriated as a standing and continuing appropriation to the tax commissioner for allocation to counties under this section and any gross receipts tax revenues exceeding that appropriation in any taxable year must be deposited in the state general fund. If gross receipts tax revenues available for allocation in a taxable year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund for the taxable year, results in allocation of eight million four hundred thousand dollars to counties per taxable year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than the tenth working day in March of each year.

SECTION 3. TRANSFER. Within five days after the effective date of this Act, the state treasurer shall transfer net gross receipts tax revenues collected under chapter 57-34 for taxable year 1998 from the state general fund to the telecommunications carriers tax fund, but the transfer under this section may not exceed the limitation on deposits in the telecommunications carriers tax fund under section 57-34-05.

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective for taxable years beginning after December 31, 1997.

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

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 507

HOUSE BILL NO. 1082

(Political Subdivisions Committee)
(At the request of the Attorney General)

CIGARETTE IMPORTATION AND PACKAGING

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to imported cigarettes; to amend and reenact section 57-36-07 of the North Dakota Century Code, relating to the size of packages for cigarette and roll-your-own tobacco sales or distribution; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³²⁹ **SECTION 1. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is amended and reenacted as follows:

57-36-07. Packaging - Presumption from possession. Cigarettes must be packaged as follows:

1. All cigarettes sold or distributed in this state must be in packages containing ~~five~~ twenty or more cigarettes each.
2. If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.
4. All packages of roll-your-own tobacco sold or distributed in this state must be in packages containing at least 0.60 ounces of tobacco.

SECTION 2. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Sale of imported cigarettes - When prohibited. A dealer, distributor, or other person may not sell or distribute in this state any tobacco product previously exported from the United States.

³²⁹ Section 57-36-07 was also amended by section 1 of Senate Bill No. 2103, chapter 508.

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

Approved March 31, 1999
Filed March 31, 1999

CHAPTER 508

SENATE BILL NO. 2103

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

TOBACCO TAX AND SALES

AN ACT to create and enact a new subsection to section 57-36-09 of the North Dakota Century Code, relating to the imposition of penalty and interest under the tobacco products tax law; and to amend and reenact sections 57-36-07, 57-36-11.1, and subsections 1 and 2 of section 57-36-25 of the North Dakota Century Code, relating to the tobacco product stamp requirements on sales to enrolled tribal members, the time for filing tobacco products tax returns by licensed tobacco products manufacturers, and the imposition of penalty and interest under the tobacco products tax law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁰ **SECTION 1. AMENDMENT.** Section 57-36-07 of the North Dakota Century Code is amended and reenacted as follows:

57-36-07. Packaging - Presumption from possession. Cigarettes must be packaged as follows:

1. All cigarettes sold in this state must be in packages containing five or more cigarettes each.
2. ~~If the cigarettes are to be sold to an enrolled tribal member pursuant to section 57-36-11.1, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.~~
3. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers upon the premises where consumer sales are made is conclusively presumed to be for sale to consumers.

SECTION 2. A new subsection to section 57-36-09 of the North Dakota Century Code is created and enacted as follows:

Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must

³³⁰ Section 57-36-07 was also amended by section 1 of House Bill No. 1082, chapter 507.

be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 3. AMENDMENT. Section 57-36-11.1 of the North Dakota Century Code is amended and reenacted as follows:

57-36-11.1. Sales of untaxed cigarettes. ~~An enrolled tribal member conducting authorized cigarette sales activities within the exterior boundaries of the Indian reservation of the tribe of the enrolled tribal member may purchase from a licensed distributor cigarettes stamped as untaxed.~~

When a distributor makes an untaxed cigarette sale to an enrolled tribal member, the distributor must obtain from the tribal member, on forms prescribed by the tax commissioner, the following information:

1. Name of the tribal member.
2. Social security number of the tribal member.
3. Name of the tribe of the tribal member.
4. Tribal enrollment number of the tribal member.
5. Residential address of the tribal member.
6. Business address and business location of the retail sales of the tribal member.
7. Certification that the tribal member has been granted authority from the tribe to conduct cigarette sales activity within the external boundaries of the reservation.

SECTION 4. AMENDMENT. Subsections 1 and 2 of section 57-36-25 of the North Dakota Century Code are 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-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~~ fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the ~~tenth~~ fifteenth day of the month following the month for which the returns are filed.

2. Any person failing to file any prescribed ~~forms of~~ form or return or to pay any tax within the time required or permitted by this section ~~shall be~~ is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of such the tax ~~for each per month or fraction of a month of delay or fraction thereof~~ excepting the portion of ~~except~~ the first month within which such after ~~the return was required to be filed or such the tax became due.~~ The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of ~~such the~~ penalty. ~~Such~~ The penalty ~~shall~~ must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 509

SENATE BILL NO. 2155

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

TAX LIABILITY BONDS

AN ACT to amend and reenact sections 57-36-09.3, 57-36-09.4, 57-38-60.1, 57-38-60.2, 57-39.2-15.2, 57-39.2-18.1, 57-40.2-15.1, 57-43.1-17.2, 57-43.1-17.3, 57-43.2-16.1, and 57-43.2-16.2 of the North Dakota Century Code, relating to an election to post a bond in lieu of corporate officer liability for the tobacco products tax, income tax, sales and use tax, motor vehicle fuel tax, and special fuel tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-09.3 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.3. Corporate officer liability.

1. 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~~ the president, vice president, secretary, or treasurer, jointly or severally, 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.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the corporation.

SECTION 2. AMENDMENT. Section 57-36-09.4 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.4. Governor and manager liability.

1. If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or 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.

2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

SECTION 3. AMENDMENT. Section 57-38-60.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-60.1. Corporate officer liability.

1. If a corporation is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~chairman, president, or chief operating officer~~ president, vice president, secretary, or treasurer, 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 corporation does not discharge an officer's liability for a prior failure of the corporation 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.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the corporation.

SECTION 4. AMENDMENT. Section 57-38-60.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-60.2. Governor and manager liability.

1. 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~~ governors or manager managers, jointly or severally, charged with the responsibility of the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or 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.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount

equal to the estimated annual income tax withholding liability of the limited liability company.

³³¹ **SECTION 5. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.2. Governor and manager liability.

1. If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments; ~~is~~ are 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.

2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the limited liability company.

³³² **SECTION 6. AMENDMENT.** Section 57-39.2-18.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-18.1. Corporate officer ~~and limited liability company~~ ~~governor or manager~~ liability.

1. If a corporation ~~or limited liability company~~ holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer of the corporation, governors, or managers jointly or severally, having control, or supervision of, or charged with the responsibility for making such returns and payments ~~shall be~~ are personally liable for such failure. The dissolution of a corporation ~~or limited liability company~~ shall not discharge an officer's; ~~governor's, or manager's~~ liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

³³¹ Section 57-39.2-15.2 was also amended by section 1 of Senate Bill No. 2099, chapter 522.

³³² Section 57-39.2-18.1 was also amended by section 2 of Senate Bill No. 2099, chapter 522.

2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the corporation.

³³³ **SECTION 7. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.1. Corporate officer and limited liability company manager liability.

1. If a corporation or limited liability company holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, ~~any of its officers~~ the president, vice president, secretary, or treasurer of the corporation, or governors or managers of a limited liability company, jointly or severally, having control, or supervision of, or charged with the responsibility for making such returns and payments shall be are personally liable for such failure. The dissolution of a corporation or limited liability company must not discharge an officer's, governor's, or manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.
2. If the corporate officers, governors, or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual use tax liability of the corporation or limited liability company.

SECTION 8. AMENDMENT. Section 57-43.1-17.2 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.2. Corporate officer liability.

1. 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~~ the president, vice president, secretary, or treasurer, jointly or severally, 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

³³³ Section 57-40.2-15.1 was also amended by section 3 of Senate Bill No. 2099, chapter 522.

and collected under the provisions of this chapter for the assessment and collection of other liabilities.

2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the corporation.

SECTION 9. AMENDMENT. Section 57-43.1-17.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.3. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments; ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or 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.
2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

SECTION 10. AMENDMENT. Section 57-43.2-16.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-16.1. Corporate officer liability.

1. 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~~ the president, vice president, secretary, or treasurer, jointly or severally, 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.
2. If the corporate officers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do

business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the corporation.

SECTION 11. AMENDMENT. Section 57-43.2-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-16.2. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governor~~ governors or ~~manager~~ managers, jointly or severally, charged with the responsibility of supervising the preparation of such returns and payments, ~~is~~ are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or 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.

2. If the governors or managers elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 510

HOUSE BILL NO. 1109

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

OBSOLETE ESTATE TAX PROVISIONS ELIMINATED

AN ACT to amend and reenact sections 47-19-06, 57-37.1-10, and 57-37.1-21 of the North Dakota Century Code, relating to the elimination of obsolete provisions relating to documents required to be filed with the tax commissioner for estate tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-19-06. Death certificates - Joint tenant - Prima facie evidence of termination of estate held. In all cases of joint tenancy in lands, and in all cases where an estate, title, or interest in, or lien upon, lands has been or may be created, which estate, title, interest, or lien was or is to continue only during the life of any person named or described in the instrument by which the estate, title, interest, or lien was created, a copy of the death certificate of the joint tenant or of the person upon whose life the estate, title, interest, or lien was or is limited, duly certified by any officer who is required by the laws of the state or country in which the record is made, to keep a record of the death of persons occurring within the jurisdiction of the officer, may be recorded in the office of the register of deeds of the county in which the lands are situated. The legal description of any property to which the recording of the death certificate relates must be attached to the death certificate. The certified copy of death certificate, or the record thereof in the office, or a duly certified copy of the last mentioned record, is prima facie evidence of the death of the person and the termination of the joint tenancy and all the estate, title, interest, and lien as was or is limited upon the life of that person. ~~The register of deeds shall forward a copy of the recorded death certificate to the tax commissioner.~~

SECTION 2. AMENDMENT. Section 57-37.1-10 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-10. Personal representative to furnish necessary documents to the tax commissioner. The personal representative shall furnish to the tax commissioner:

1. ~~One copy of application for determination of A North Dakota estate tax for the decedent return.~~
2. ~~Two copies of certificate of estate tax determination.~~
3. ~~A copy of decedent's will, if any.~~
4. A copy of the federal estate tax return.
5. ~~3.~~ 3. ~~Such other~~ Other information as the tax commissioner shall require.

The tax commissioner shall notify the personal representative of the amount of such assessment prior to execution of the certificate of estate tax determination, but failure to receive such notice from the tax commissioner does not excuse the nonpayment of the tax nor invalidate the tax or interest thereon in any way.

SECTION 3. AMENDMENT. Section 57-37.1-21 of the North Dakota Century Code is amended and reenacted as follows:

57-37.1-21. When return required - Tax commissioner's release.

1. The personal representative shall file an estate tax return pursuant to this chapter for the estate of any decedent for ~~which~~ whom a federal estate tax return is required to be filed if the federal gross estate includes any property or interest in property that has a situs in North Dakota.
2. If it appears to the personal representative of an estate that no filing requirement for an estate tax return exists, he may file a verified petition, in duplicate, with the tax commissioner showing the value and form of ownership of all the real and personal property includable in the gross estate of the decedent. In addition to including said real and personal property in the petition, the petition must also contain the name, the age at time of death, the date of death, and the residence of the decedent, and the name of the heirs and beneficiaries of the decedent.
3. If the tax commissioner finds that in no event could there be an estate tax filing requirement for the estate of the decedent, the tax commissioner shall issue to the personal representative a certificate of the tax commissioner that no estate tax return is required to be filed. Said certificate must contain a list of the real property includable in the gross estate of the decedent. This certificate may be recorded in the office of the register of deeds of the county in which lands of the decedent are situated, and such record will release as against any property described within said certificate any estate tax lien upon the estate of the named decedent.
4. If the tax commissioner finds that ~~an~~ a required estate tax return is ~~required to be~~ has not been filed, ~~he~~ the tax commissioner shall ~~so~~ notify the personal representative of ~~his~~ the tax commissioner's finding and the ~~fact determination upon which such~~ basis for the finding is made.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for estates of decedents whose deaths occur after December 31, 1998.

Approved January 27, 1999
Filed January 27, 1999

CHAPTER 511

HOUSE BILL NO. 1474

(Representatives Niemeier, Nichols, Kerzman)
(Senators DeMers, Wardner)

FAMILY CARE TAX CREDIT

AN ACT to amend and reenact section 57-38-01.20 of the North Dakota Century Code, relating to the income tax credit for expenses of caring for certain family members; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.20 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-01.20. Credit for expenses of caring for certain family members.

1. An individual is entitled to a credit against the tax imposed under section 57-38-29 or 57-38-30.3 in the amount of qualified care expenses under this section paid by the individual for the care of a qualifying family member during the taxable year.
2. A qualifying family member is an individual who has taxable income of ~~fifteen~~ twenty thousand dollars or less or a married individual with taxable income of ~~thirty~~ thirty-five thousand dollars or less, including that of the individual's spouse, for the taxable year. A qualifying family member must be related to the taxpayer by blood or marriage and either sixty-five years of age or older or determined to be disabled by the social security administration.
3. a. Qualified care expenses include payments by the taxpayer for home health agency services, companionship services, personal care attendant services, homemaker services, adult day care, respite care, health care equipment and supplies, and other expenses for goods or services that are necessary to allow the qualifying family member to avoid placement in a long-term care facility and which are:
 - (1) Provided to or for the benefit of the qualifying family member or to assist the taxpayer in caring for the qualifying family member;
 - (2) Provided by an organization or individual not related to the taxpayer or the qualifying family member; and
 - (3) Not compensated for by insurance or federal or state assistance programs.
- b. For purposes of this subsection, "companionship services" means services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person,

including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" does not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and does not include services of individuals who provide care and protection for infants and young children who are not physically or mentally disabled.

4. The percentage amount of credit allowable under this section is:
 - a. For a taxpayer whose taxable income does not exceed twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, thirty percent of qualified elderly care expenses; or
 - b. For a taxpayer whose taxable income exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return, the greater of:
 - (1) Twenty percent of qualified elderly care expenses; or
 - (2) Thirty percent of qualified elderly care expenses, minus one percent of those expenses for each two thousand dollars or fraction of two thousand dollars by which the taxable income of the taxpayer for the taxable year exceeds twenty-five thousand dollars, or thirty-five thousand dollars for a joint return.
5. The dollar amount of credit allowable under this section is:
 - a. Reduced by one dollar for each dollar of the taxable income over fifty thousand dollars for a taxpayer whose taxable income exceeds fifty thousand dollars, or for a joint return, reduced by one dollar for each dollar of the taxable income over seventy thousand dollars for taxpayers whose taxable income exceeds seventy thousand dollars;
 - b. Limited to two thousand dollars per qualifying family member in a taxable year and to four thousand dollars total for two or more qualifying family members in a taxable year; and
 - c. Prorated among multiple taxpayers who each contribute to qualified care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified care expenses paid by those taxpayers for that qualified family member. To the extent necessary to administer proration under this subdivision, the secrecy provisions of section 57-38-57 do not apply to disclosures necessary to advise taxpayers of how proration should have been computed.
6. A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

7. In the case of a married individual filing a separate return, the percentage amount of credit under subsection 4 and the dollar amount of credit under subsection 5 are limited to one-half of the amounts indicated in those subsections.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1998.

Approved March 9, 1999

Filed March 9, 1999

CHAPTER 512

HOUSE BILL NO. 1113

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

SHORT FORM INCOME TAX LIABILITY

AN ACT to amend and reenact subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to the definition of federal income tax liability for short form income tax return purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁴ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-38-30.3 of the 1997 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 4116), 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. computed for the taxable year under Internal Revenue Code sections 1 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:~~
 - a. Add the alternative minimum tax computed under Internal Revenue Code section 55;

³³⁴ Section 57-38-30.3 was also amended by section 6 of Senate Bill No. 2009, chapter 31, and section 11 of House Bill No. 1492, chapter 369.

- b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;
- c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;
- d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);
- e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;
- f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;
- g. Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- h. Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- i. Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; and
- j. Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53.

Unless specifically provided for in this subsection, no federal income tax credit may be subtracted in determining the federal income tax liability for purposes of this section.

Approved March 9, 1999
Filed March 9, 1999

CHAPTER 513

SENATE BILL NO. 2102

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

INCOME TAX REFUND INTEREST

AN ACT to amend and reenact section 57-38-35.2, subsection 15 of section 57-38-40, and subsections 1 and 2 of section 57-38-45 of the North Dakota Century Code, relating to the payment of interest on income tax refunds; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-35.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-38-35.2. Interest payments.

1. ~~If, for any portion of the time period over which interest is otherwise computed under this section on a refund, interest was previously computed under subsection 4 of section 57-38-45 on additional tax due for any tax period, the interest computed on the refund for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the additional tax due, but only to the extent that the amount of the refund does not exceed the amount of the additional tax due.~~
2. ~~To the extent subsection 4 does not apply, interest~~ Interest at the rate of ~~ten percent per annum~~ one per cent per month or fraction of a month must be allowed and paid upon overpayments of ~~income taxes~~ tax as follows:
 - a. ~~No interest accrues~~ Interest on refunds arising from excess income tax withholding or overpayment of ~~declarations of~~ estimated tax reported on the taxpayer's return for that tax period if a refund accrues for payment is made ~~within~~ within forty-five days after the due date of the return or after the date the return was filed, whichever comes later.
 - b. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from the due date of the return; ~~without regard to extensions of the time for filing the return,~~ to the date of payment of the refund; ~~except that if the refund payment is made within forty-five days of the date the amended return or claim is filed, interest accrues to the date the amended return or claim is filed~~ excepting the month in which the return was required to be filed.
 - c. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from the due date of the return for the year, determined without regard to extensions of the time for filing, giving rise to the loss carryback, to the date of

payment of the refund, except that no interest accrues if the refund payment is made within forty-five days of the date the amended return or claim is filed to claim the refund attributable to the net operating loss or capital loss carryback.

- ~~3.~~ 2. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.

SECTION 2. AMENDMENT. Subsection 15 of section 57-38-40 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. If the tax commissioner determines there has been an overpayment of tax, any overpaid penalty and interest on that tax must be refunded or credited by the tax commissioner. If interest is paid under section 57-38-35.2, no interest will be paid under this subsection.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 57-38-45 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the rate of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for the payment, there must be added to the tax interest at the rate of one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one percent of the additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - e. ~~If, for any portion of the time period over which interest is otherwise computed under this subsection on additional tax due, interest was previously computed under subsection 2 of section 57-38-35.2 on a refund for any tax period, the interest computed on~~

the additional tax due for that portion of the time period must be computed at the same rate and in the same manner that was used in computing the interest on the refund, but only to the extent that the amount of the additional tax due does not exceed the amount of the refund.

- f. If a deficiency is determined for a tax period for which there was an overpayment that was applied to the following tax period's estimated tax under subsection 6 of section 57-38-62, interest accrues with respect to the amount of the deficiency that is equal to or less than the amount of the overpayment applied from the estimated tax payment date to which the overpayment was applied.
 - f. If a deficiency is determined for a tax period for which there was an overpayment of estimated tax that was refunded, interest accrues, with respect to the amount of the deficiency which is equal to or less than the amount of the overpayment of estimated tax refunded, from the date of payment of the refund.
2. In addition to the interest prescribed in this chapter, a taxpayer is subject to additions to tax and penalty as follows:
- a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.
 - c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.
 - f. 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 4. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to tax years beginning after December 31, 1997.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 514**HOUSE BILL NO. 1112**

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

INCOME TAX WITHHOLDING BONDS

AN ACT to amend and reenact subsection 9 of section 57-38-60 of the North Dakota Century Code, relating to bond requirements for income tax withholding purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-38-60 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ An 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~~ this state ~~of North Dakota~~ in ~~such~~ an amount ~~as is~~ reasonably calculated to ensure the payment to the state of taxes deducted and withheld from wages.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 515**HOUSE BILL NO. 1307**

(Representatives Glassheim, Mickelson)
(Senator Cook)

INCOME TAX REFUND SETOFF

AN ACT to amend and reenact subsection 1 of section 57-38.3-02 and subsection 1 of section 57-38.3-05 of the North Dakota Century Code, relating to claimant agencies for setoff of income tax refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38.3-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Claimant agency" means the department of human services, job service North Dakota, the workers compensation bureau, ~~or~~ the North Dakota guaranteed student loan program, the industrial commission acting as the state housing finance agency under chapter 54-17, or a housing authority created under section 23-11-02. On or before September first of each year, the state housing finance agency shall conduct an election by mail among housing authorities of the state and certify to the tax commissioner which housing authority received the greatest number of votes and is capable of compliance with the duties of a claimant agency under section 57-38.3-05. During the ensuing calendar year, the housing authority certified as selected under this subsection shall act as the claimant agency for all housing authorities for the purposes of submitting debtor information to the tax commissioner for fund transfers and for providing notice to the debtor as required by section 57-38.3-05.

SECTION 2. AMENDMENT. Subsection 1 of section 57-38.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Within a time specified by the commissioner, a claimant agency seeking to collect a debt through setoff shall supply the information necessary, in a form and in the manner prescribed by the commissioner, to identify each debtor whose refund is sought to be set off and certify the amount of the debt or debts owed by each ~~such~~ debtor.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 516

HOUSE BILL NO. 1487 (Representatives Belter, Brandenburg)

FARM MACHINERY AND PARTS SALES TAX

AN ACT to amend and reenact subsection 2 of section 57-39.2-02.1 and subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the rate of sales and use tax for farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; 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:

³³⁵ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new farm machinery, ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. For purposes of this subsection, "used" means:
 - a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

³³⁶ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³³⁵ Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2217, chapter 517, and section 1 of House Bill No. 1454, chapter 518.

³³⁶ Section 57-40.2-02.1 was also amended by section 2 of Senate Bill No. 2217, chapter 517, and section 3 of House Bill No. 1454, chapter 518.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. For purposes of this subsection, "used" means:
- a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after April 30, 1999, and before July 1, 2001, and after that date is ineffective.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 517

SENATE BILL NO. 2217

(Senators Christmann, Lyson, Wanzek)
(Representatives Boehm, Brusegaard, Nelson)

FARM MACHINERY AND PARTS SALES TAX

AN ACT to amend and reenact subsection 2 of section 57-39.2-02.1 and subsection 2 of section 57-40.2-02.1 of the North Dakota Century Code, relating to the rate of sales and use tax for farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; 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:

³³⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. For purposes of this subsection, "used" means:
 - a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

³³⁸ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³³⁷ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1487, chapter 516, and section 1 of House Bill No. 1454, chapter 518.

³³⁸ Section 57-40.2-02.1 was also amended by section 2 of House Bill No. 1487, chapter 516, and section 3 of House Bill No. 1454, chapter 518.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~, and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. For purposes of this subsection, "used" means:
- a. Tax under this chapter has been paid on a previous sale;
 - b. Originally purchased outside this state and previously owned by a farmer; or
 - c. Has been under lease or rental for three years or more.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after April 30, 1999, and before July 1, 2001, and is thereafter ineffective.

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

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 518

HOUSE BILL NO. 1454

(Representatives Belter, Hanson)

(Senators Kinnoin, Urlacher)

COAL TAX AND ALLOCATION

AN ACT to amend and reenact subsection 3 of section 57-39.2-02.1, subsection 9 of section 57-40.2-01, and subsection 3 of section 57-40.2-02.1 of the North Dakota Century Code, relating to sales and use taxes on coal and allocation of tax revenues; to repeal section 57-61-01.8 of the North Dakota Century Code, relating to a reduced severance tax for coal burned in small boilers; to provide a statement of legislative intent; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³⁹ **SECTION 1. AMENDMENT.** Subsection 3 of section 57-39.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. There is imposed a tax of ~~six cents per million British thermal units~~ seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.

SECTION 2. AMENDMENT. Subsection 9 of section 57-40.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand ~~or~~, gravel, or coal from the soil of this state for use within or outside this state.

³⁴⁰ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-40.2-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of ~~six cents per million British thermal units~~

³³⁹ Section 57-39.2-02.1 was also amended by section 1 of House Bill No. 1487, chapter 516, and section 1 of Senate Bill No. 2217, chapter 517.

³⁴⁰ Section 57-40.2-02.1 was also amended by section 2 of House Bill No. 1487, chapter 516, and section 2 of Senate Bill No. 2217, chapter 517.

seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.

SECTION 4. REPEAL. Section 57-61-01.8 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that sections 57-39.2-02.1, 57-39.2-26.1, and 57-40.2-02.1 remain effective, except as amended by this Act.

SECTION 6. EFFECTIVE DATE. Section 4 of this Act is effective July 1, 2003.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 519**SENATE BILL NO. 2421**

(Senators Cook, Christmann, Tomac)
(Representatives Berg, R. Kelsch, Mahoney)

OIL REFINING EQUIPMENT SALES TAX EXEMPTION

AN ACT to amend and reenact subdivision e of subsection 5 of section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales tax exemption for certain machinery and equipment for refining of crude oil; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 5 of section 57-39.2-04.3 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, and the refining of crude oil but does not include mining, other refining, extracting oil and gas, or the generation of electricity.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable events occurring after January 31, 1999, and before August 1, 2002, and is thereafter ineffective.

Approved March 29, 1999
Filed March 29, 1999

CHAPTER 520

SENATE BILL NO. 2104

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

SALES AND USE TAX RETURN FILING

AN ACT to amend and reenact subsection 1 of section 57-39.2-12, subsection 1 of section 57-39.2-12.1, subsection 7 of section 57-40.2-07, and subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code, relating to the monthly filing of sales and use tax returns in the event of a business reorganization and reimbursement of administrative expenses for monthly filing of sales and use tax returns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-12 of the North Dakota Century Code is amended and reenacted as follows:

1. The tax levied under this chapter is due and payable in quarterly installments on or before the last day of the month next succeeding each calendar quarterly period, except that if total sales subject to sales and use taxes for the preceding calendar year for any business which has been issued a sales tax permit equal or exceed three hundred thirty-three thousand dollars, the tax levied under this chapter is payable monthly on or before the last day of the next succeeding month, except tax collected during May in each odd-numbered year is payable on or before the twenty-second day of June of that year. The retailer shall pay the total tax due in the manner prescribed by the commissioner. Penalties and interest for failure to file a return, for filing an incorrect return, or for failure to pay the tax due are those prescribed in section 57-39.2-18. If the total of sales subject to the tax decreases below three hundred thirty-three thousand dollars for any succeeding year, the retailer ~~shall~~ may return to quarterly filing and payments. When there is a sale of any business by any retailer or when any business is discontinued by a retailer, the tax becomes due immediately prior to the sale or discontinuance of the business and if not paid within fifteen days thereafter it becomes delinquent and subject to the penalties provided in section 57-39.2-18. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this subsection.

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the ~~estimated~~ tax due under section 57-39.2-12 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due.

SECTION 3. AMENDMENT. Subsection 7 of section 57-40.2-07 of the North Dakota Century Code is amended and reenacted as follows:

7. If total sales and purchases subject to sales and use taxes for the preceding calendar year equal or exceed three hundred thirty-three thousand dollars, the tax levied by this chapter is payable monthly on or before the last day of the next succeeding month, except for taxes collected during May of each odd-numbered year, which are payable on or before the twenty-second day of June of that year. The amount of monthly tax payable, manner of payment, filing of the return, penalty, and waiver of penalty must be that prescribed in subsection 1 of section 57-39.2-12. Penalty and interest for failure to file a return or corrected return or to pay the tax imposed must be that prescribed in section 57-40.2-15. If a person is required to file more than one return pursuant to this section, the monthly payment requirement applies separately to each return. If total sales and purchases subject to sales and use taxes for any succeeding calendar year decrease below three hundred thirty-three thousand dollars, a person may return to quarterly installments. In the event of a business reorganization in which the ownership of the business organization remains in the same person or persons as prior to the reorganization, the total sales subject to sales and use taxes for the preceding calendar year for the business that was reorganized must be used to determine whether the tax is payable monthly under this section.

SECTION 4. AMENDMENT. Subsection 1 of section 57-40.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A retailer who pays the ~~estimated~~ tax due under section 57-40.2-07 within the time limitations prescribed may deduct and retain one and one-half percent of the tax due.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 521**SENATE BILL NO. 2105**

(Appropriations Committee)
(At the request of the Tax Commissioner)

**STATE AID DISTRIBUTION FUND REVENUE
ALLOCATION**

AN ACT to provide for allocation of state aid distribution fund revenues upon transition to the allocation formula established by 1997 House Bill No. 1019; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ALLOCATION. The amount of the appropriation in section 1 of 1997 House Bill No. 1019 remaining unexpended as of December 31, 1998, must be allocated by the state treasurer in a single quarterly allocation under the formula contained in section 57-39.2-26.1, as effective January 1, 1999.

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

Approved February 18, 1999
Filed February 18, 1999

CHAPTER 522

SENATE BILL NO. 2099 (Finance and Taxation Committee) (At the request of the Tax Commissioner)

GOVERNOR AND MANAGER USE AND SALES TAX LIABILITY

AN ACT to create and enact section 57-40.2-15.2 of the North Dakota Century Code, relating to governor and manager liability for use tax; and to amend and reenact sections 57-39.2-15.2, 57-39.2-18.1, and 57-40.2-15.1 of the North Dakota Century Code, relating to governor and manager liability for sales taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴¹ **SECTION 1. AMENDMENT.** Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.2. Governor and manager liability. If a limited liability company ~~is an employer and~~ required to hold a permit issued under this chapter 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 the~~ returns and payments, is personally liable for ~~such the~~ failure. The dissolution of a limited liability company does not discharge a governor's or 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.

³⁴² **SECTION 2. AMENDMENT.** Section 57-39.2-18.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-39.2-18.1. Corporate officer ~~and limited liability company~~ governor or manager liability. If a corporation ~~or limited liability company~~ holding required to hold a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, ~~governors, or managers~~ having control, or supervision of, or charged with the responsibility for making ~~such the~~ returns and payments ~~shall be~~ is personally liable for ~~such the~~ failure. The dissolution of a corporation ~~or limited liability company~~ shall does not discharge an officer's, ~~governor's, or manager's~~ liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for ~~such a the~~ liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

³⁴¹ Section 57-39.2-15.2 was also amended by section 5 of Senate Bill No. 2155, chapter 509.

³⁴² Section 57-39.2-18.1 was also amended by section 6 of Senate Bill No. 2155, chapter 509.

³⁴³ **SECTION 3. AMENDMENT.** Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.1. Corporate officer and limited liability company manager liability.

If a corporation ~~or limited liability company~~ holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due under this chapter, any of its officers ~~or managers~~ having control, or supervision of, or charged with the responsibility for making ~~such~~ the returns and payments ~~shall be~~ is personally liable for ~~such~~ the failure. The dissolution of a corporation ~~or limited liability company~~ shall ~~does~~ not discharge an officer's liability for a prior failure of the corporation ~~or limited liability company~~ to make a return or remit the tax due. The sum due for ~~such a~~ the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

SECTION 4. Section 57-40.2-15.2 of the North Dakota Century Code is created and enacted as follows:

57-40.2-15.2. Governor and manager liability. If a limited liability company 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 the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file 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.

Approved March 5, 1999
Filed March 5, 1999

³⁴³ Section 57-40.2-15.1 was also amended by section 7 of Senate Bill No. 2155, chapter 509.

CHAPTER 523

HOUSE BILL NO. 1110

(Transportation Committee)
(At the request of the Tax Commissioner)

MOTOR VEHICLE EXCISE TAX EXEMPTIONS

AN ACT to amend and reenact subsections 1, 8, and 10 of section 57-40.3-04 of the North Dakota Century Code, relating to motor vehicle excise tax exemptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴⁴ **SECTION 1. AMENDMENT.** Subsections 1, 8, and 10 of section 57-40.3-04 of the North Dakota Century Code are amended and reenacted as follows:

1. Motor vehicles acquired by, or leased and in the possession of, disabled veterans under the provisions of Pub. L. 79-663 [38 U.S.C. 1901] and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by ~~such~~ a disabled veteran; provided, that this exemption is allowed only with respect to one ~~such~~ motor vehicle owned or leased by ~~such~~ a disabled veteran at any one time.

8. Any motor vehicle ~~which~~ that does not exceed ten thousand pounds [4535.92 kilograms] gross weight and which is acquired by, or leased and in the possession of, a permanently physically disabled, licensed driver who is restricted to operating only motor vehicles equipped with special controls to compensate for the disability, or by permanently physically disabled individuals who have either surrendered or who have been denied a driver's license because of a permanent physical disability, provided the individuals obtain from the director of the department of transportation or ~~his~~ the director's authorized representative a statement that the individual has ~~such~~ a restricted driver's license or has either surrendered or has not been issued a driver's license because of a permanent physical disability; a copy of the statement must be attached to the application for registration of the title to the motor vehicle for which the exemption from tax under this chapter is claimed. Any motor vehicle acquired subject to this exemption must be disposed of either by transfer to another permanently physically disabled person or by a trade-in on another exempt sale or by a transfer involving a sale subject to sales or use tax before another motor vehicle can be acquired subject to the benefits of this exemption clause.

³⁴⁴ Section 57-40.3-04 was also amended by section 1 of House Bill No. 111, chapter 524.

10. Motor vehicles acquired by, or leased and in the possession of, any parochial or private nonprofit school to be used for the transportation of students; provided, that to qualify a school must normally maintain a regular faculty and curriculum and must have a regularly organized body of students in attendance, and provided that the vehicles are not to be used for commercial activities.

Approved March 8, 1999

Filed March 9, 1999

CHAPTER 524

HOUSE BILL NO. 1111

(Transportation Committee)
(At the request of the Tax Commissioner)

EXEMPTION FOR MOTOR VEHICLE TRANSFERS

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to the motor vehicle excise tax exemption for transfers of motor vehicles in a business reorganization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴⁵ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. Motor vehicles acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it; the transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; the transfer of motor vehicles by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; the transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; and the transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization ~~but the~~ in which the ownership of which the reorganized business organization remains in the same person or persons as prior to the reorganization, but only if the title transfer is completed within one hundred eighty days from the effective date of the reorganization.

Approved March 9, 1999
Filed March 9, 1999

³⁴⁵ Section 57-40.3-04 was also amended by section 1 of House Bill No. 1110, chapter 523.

CHAPTER 525

SENATE BILL NO. 2318

(Senators Lyson, Kinnoin)
(Representative DeKrey)

TELEPHONE EXCISE TAX BALLOT MEASURES

AN ACT to amend and reenact section 57-40.6-02 of the North Dakota Century Code, relating to ballot measures on the question of excise taxes on telephone access lines.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose excise tax on telephone access lines - Procedure. The governing body of a county or city may impose an excise tax on the use of telephone access lines in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the excise tax permitted under this section. The resolution must specify an effective date for the tax which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the excise tax. The resolution must include a provision for submitting the proposed excise tax to the electors of the county or city before the imposition of the tax is effective. The resolution must specify a tax that does not exceed one dollar per month per telephone access line.
2. The question of the adoption of the excise tax must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed tax authorized under subsection 1. The question of the adoption of the excise tax may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the excise tax. The tax is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the tax for an initial six-year period.
3. Any political subdivision that desires to increase the tax, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the tax. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the tax authorized by this section is approved by the electors, the tax may be reimposed for six additional years without resubmitting the question to the electors.

4. In any geographic area, only one political subdivision may impose the excise tax.
5. In the interest of public safety, where the customers exchange boundary and the boundary of the political subdivision imposing the tax do not coincide, and where all of the political subdivisions within the exchange boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange boundary have voted for the tax, an exchange customer residing outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system. The telephone company may collect an additional tax, equal in amount to the basic tax on those subscribers within the exchange boundary. The additional tax amounts collected must be remitted as provided in this chapter.

Approved March 15, 1999

Filed March 16, 1999

CHAPTER 526

SENATE BILL NO. 2177

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

FUEL TAX REVISIONS

AN ACT to create and enact sections 57-43.1-06.1, 57-43.1-12.1, 57-43.1-14.1, 57-43.1-14.2, 57-43.1-15.1, 57-43.1-16.1, 57-43.1-16.2, 57-43.1-45, 57-43.1-46, 57-43.1-47, 57-43.2-04.2, 57-43.2-04.3, 57-43.2-04.4, 57-43.2-07.1, 57-43.2-07.2, 57-43.2-11.1, 57-43.2-11.2, 57-43.2-14.1, 57-43.2-38, 57-43.2-39, 57-43.2-40, 57-43.3-08, 57-43.3-09, 57-43.3-10, 57-43.3-11, 57-43.3-12, 57-43.3-13, 57-43.3-14, 57-43.3-15, 57-43.3-16, 57-43.3-17, 57-43.3-18, 57-43.3-19, 57-43.3-20, 57-43.3-21, 57-43.3-22, 57-43.3-23, 57-43.3-24, 57-43.3-25, 57-43.3-26, 57-43.3-27, and 57-43.3-28 of the North Dakota Century Code, relating to the motor vehicle fuel tax, the special fuel tax, interstate motor carriers tax, and the aviation fuel tax; to amend and reenact sections 57-43.1-01, 57-43.1-02, 57-43.1-04, 57-43.1-06, 57-43.1-08, 57-43.1-11, 57-43.1-13, 57-43.1-14, 57-43.1-15, 57-43.1-16, 57-43.1-17, 57-43.1-17.1, 57-43.1-21, 57-43.1-24, 57-43.1-25, 57-43.1-26, 57-43.1-27, 57-43.1-28, 57-43.1-30, 57-43.1-32, 57-43.2-01, 57-43.2-02, 57-43.2-02.2, 57-43.2-03, 57-43.2-04.1, 57-43.2-05, 57-43.2-07, 57-43.2-08, 57-43.2-09, 57-43.2-10, 57-43.2-11, 57-43.2-14, 57-43.2-15, 57-43.2-19, 57-43.2-20, 57-43.2-21, 57-43.2-22, 57-43.3-01, 57-43.3-02, 57-43.3-03, and 57-43.3-04 of the North Dakota Century Code, relating to the motor vehicle fuel tax, the special fuel tax, and the aviation fuel tax; to repeal sections 57-43.1-18, 57-43.1-20, 57-43.1-22, 57-43.1-23, 57-43.1-31, 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-42, 57-43.1-42.1, 57-43.1-43, 57-43.2-04, 57-43.2-06, 57-43.2-12, 57-43.2-13, 57-43.2-16, 57-43.2-17, 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35, 57-43.2-35.1, 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code, relating to obsolete and redundant provisions of the motor vehicle fuel tax, the special fuel tax, importer for use tax, and the aviation fuel tax; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.

3. "Common carrier" or "contract carrier" means a person involved in the movement of motor vehicle fuel from a terminal or movement of motor vehicle fuel imported into this state, who is not an owner of the motor vehicle fuel.
4. "Consumer" means a user of motor vehicle fuel including any person purchasing motor vehicle fuel in this state for use in a licensed motor vehicle; any person importing motor vehicle fuel into this state or purchasing motor vehicle fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing motor vehicle fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer person importing or purchasing motor vehicle fuel for resale.
4. ~~"Dealer" means any person importing or causing to be imported into this state any motor vehicle fuel for operating or propelling motor vehicles for use, distribution or sale, in and after the fuel reaches this state and any person producing, refining, manufacturing, compounding, or purchasing any motor vehicle fuel in this state for use, distribution, or sale in this state.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which motor vehicle fuel is directed for delivery into a storage facility, receptacle, container, or any type of transportation equipment, for purposes of resale or use.
6. "Director" means the director of the department of transportation.
6. ~~"Importer for use" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.~~
7. "Distributor" means a person, other than a retailer, who acquires motor vehicle fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
9. "Exporter" means a refiner, supplier, or distributor who exports motor vehicle fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.

11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
12. "Import" means the delivery of motor vehicle fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
13. "Importer" means a refiner, supplier, or distributor who imports motor vehicle fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
14. "Industrial purpose" means:

- a. A manufacturing, warehousing, or loading dock operation;
- b. Construction;
- c. Sand and gravel processing;
- d. Well drilling, well testing, or well servicing;
- e. Maintenance of business premises, golf courses, or cemeteries;
- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

15. "Interstate motor carrier" means any person importing motor vehicle fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
- ~~8.~~ 16. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.

- 9: 17. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the motor vehicle fuels defined in this chapter, but does not include aircraft.
- 40: 18. "Motor vehicle fuel" means all products commonly or commercially known or sold as gasoline, including casinghead and absorption or natural gasoline, regardless of their classifications or uses, and any liquid which, when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene, and similar petroleum products (American society for testing materials designation D-86), shows not less than ten percent distilled (recovered) below three hundred forty-seven degrees Fahrenheit [175 degrees Celsius] and not less than ninety-five percent distilled (recovered) below four hundred sixty-four degrees Fahrenheit [240 degrees Celsius] but does not include aviation fuel. It includes agriculturally derived alcohol blended with gasoline, used in a pure state, or if blended with another agriculturally derived liquid.
- 41: ~~"Original package" means any tank car, barrel, or other package which is in the form and condition in which it was imported into the state or into which motor vehicle fuel refined in this state or imported by pipeline is placed when removed from refinery storage or pipeline terminal storage.~~
- 42: 19. "Person" means every individual, partnership, ~~society,~~ firm, association, joint ~~stock company~~ venture, corporation, limited liability company, trustee, executor, administrator, or guardian. Whenever used in any case prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association includes the partners or members, as applied to corporations, the officers, and as applied to limited liability companies, the managers estate, business trust, receiver, or any other group or combination acting as a unit.
20. "Physical inventory reading" means a measurement of motor vehicle fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
21. "Position holder" means a person holding an inventory position of motor vehicle fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns motor vehicle fuel in a terminal.
- 43: 22. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
23. "Rack" means a mechanism used to dispense motor vehicle fuel from a terminal.

24. "Refiner" means a person who produces, manufactures, or refines motor vehicle fuel in this state or a person who produces alcohol or alcohol derivative substances in this state for blending with motor vehicle fuel.
25. "Retail location" means a site at which motor vehicle fuel is dispensed through a pump from an underground or aboveground storage tank into the supply tank of a motor vehicle.
26. "Retailer" means a person who acquires motor vehicle fuel from a supplier or distributor for resale to a consumer at a retail location.
44. 27. "Sale" means, with respect to motor vehicle fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, ~~of motor vehicle fuel between dealers or between a dealer and a retailer or a consumer.~~
15. "Wholesale dealer" has the same meaning as "dealer" with the added qualification that it means those selling or delivering motor vehicle fuel ~~to retail dealers.~~
28. "Supplier" means a refiner who distributes motor vehicle fuel from a terminal in this state, or a person who acquires motor vehicle fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal or a person who acquires motor vehicle fuel by truck or railcar for storage at and distribution from a terminal in this state.
29. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
30. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the motor vehicle fuel may be removed from the rack.
31. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
32. "Wholesale distribution" means the sale of motor vehicle fuel by a supplier or distributor.

³⁴⁶ **SECTION 2. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. (Effective through December 31, 1999) Tax imposed on motor vehicle fuels.

³⁴⁶ Section 57-43.1-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 1 of House Bill No. 1130, chapter 527.

1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The dealer~~ A supplier or distributor shall collect remit the tax imposed by this section from the on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on all sales.
3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~ The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after December 31, 1999) Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. ~~The dealer~~ A supplier or distributor shall collect remit the tax imposed by this section from the on motor vehicle fuel used, on the wholesale distribution of motor vehicle fuel to a retailer, and on direct sales of motor vehicle fuel to a consumer on all sales.
3. ~~Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~ The tax imposed by this section does not apply on a sale by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the consumer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.

5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the motor vehicle fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 3. AMENDMENT. Section 57-43.1-04 of the 1997 Supplement to 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 a licensed motor vehicle, the purpose or type of project for which the motor vehicle fuel was used, and such other information as the commissioner requires. The original invoices or sales tickets proving the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. The invoices or sales tickets must include the ~~dealer's or retailer's~~ seller's name and address, the date the fuel was purchased, the type of product, the number of gallons [liters] of motor vehicle fuel purchased, the state tax as a separate item or a statement that the state tax is included in the price, and the name of the claimant. If the original invoices or sales tickets are lost, the claimant may substitute duplicate invoices or sales tickets 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. A ~~dealer~~ supplier, distributor, or retailer is prohibited from preparing a refund claim for the consumer.

SECTION 4. AMENDMENT. Section 57-43.1-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-06. Refund to prevent taxation by multiple jurisdictions. Any person to whom ~~special fuel or~~ motor vehicle fuel is sold on which the tax imposed by this chapter ~~or chapter 57-43.2~~ has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state which requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter ~~or chapter 57-43.2~~. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 5. Section 57-43.1-06.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-06.1. Refund of tax on tax exempt sales. When a person purchasing motor vehicle fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 6. AMENDMENT. Section 57-43.1-08 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-08. Refund to state or political subdivision. When any construction, reconstruction, or maintenance of a public road, highway, street, or airport is undertaken by the state or any political subdivision in the state and where public funds of the United States, state, or any political subdivision are directly used for the purchasing of motor vehicle fuel to be used in publicly owned vehicles for such construction, reconstruction, or maintenance, such motor vehicle fuel is subject to a refund of the tax paid on the fuel as provided for in this chapter and under the same terms and conditions. The refund provided for in this section may not be reduced for deposit to the ~~agriculturally derived~~ agricultural fuel tax fund.

SECTION 7. AMENDMENT. Section 57-43.1-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-11. Assignment of refund claims. ~~Any~~ A consumer eligible for a motor vehicle fuel tax refund under this chapter, who ~~has been sold~~ purchased the fuel ~~by a dealer on open account with the dealer paying the motor vehicle fuel tax,~~ may assign the refund to the ~~dealer~~ seller by attaching an assignment agreement, on a form prescribed by the commissioner, to the refund claim submitted ~~by the claimant~~ in accordance with section 57-43.1-04. If an assignment of a refund is made, the refund check or warrant issued ~~must~~ shall be made payable to both the claimant and the assignee.

SECTION 8. Section 57-43.1-12.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-12.1. 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 provided the accounts charged off included the cost of the fuel as well as the 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 because of a discontinuance of a business or for other valid reason, the amount may be refunded.

SECTION 9. AMENDMENT. Section 57-43.1-13 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-13. Dealer Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - License fees.

1. ~~No~~ A person may not engage in business in this state as a ~~dealer in~~ refiner, supplier, distributor, importer, exporter, or terminal operator of motor vehicle fuel unless that person holds an unrevoked license issued by the commissioner ~~authorizing that person to engage in such business.~~

2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
 - g. If a foreign limited liability company, the limited liability company name, the state and date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 10. AMENDMENT. Section 57-43.1-14 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-14. Form and contents of application for dealer's license - Fee - Bond or other security letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the motor vehicle fuel tax liabilities imposed by this chapter. A refiner,

terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

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: The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars.~~
 - 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, by any authorized officer, if a corporation, and by any authorized manager, if a limited liability company.~~
2. ~~At the time of applying for a license, the applicant shall pay to the commissioner as a license fee the sum of twenty dollars. This fee must be paid into the state treasury and credited to the general fund. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.~~
3. ~~As a condition precedent to the issuance of a license, a dealer shall furnish a bond in an amount set by the commissioner, but not less than one thousand dollars, guaranteeing the payment of the motor vehicle fuel tax collected by the dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a dealer has had a valid license for three or more years, the commissioner may review the records of the dealer and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.~~

4. In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner may prescribe, may be deposited with the commissioner, which securities shall be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to recover any tax, penalties, or interest due. All moneys deposited as security with the commissioner under the provisions of this subsection must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the "motor vehicle fuel tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid when due, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much of the deposit as is necessary to satisfy the tax, penalty, and interest due. The commissioner, when in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the depositor, shall certify that information to the director of the office of management and budget who shall pay the unused money to the depositor. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the motor vehicle fuel tax, penalties, and interest due.

5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 11. Section 57-43.1-14.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-14.1. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 12. Section 57-43.1-14.2 of the North Dakota Century Code is created and enacted as follows:

57-43.1-14.2. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 13. AMENDMENT. Section 57-43.1-15 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-15. License - Contents - Authority conferred Application for license - Issuance of license - Denial of license. ~~Upon the filing of an application for a license and payment of the fee to engage in business as a dealer in motor vehicle fuel, the commissioner shall issue to the applicant a license authorizing the applicant to engage in business in this state as a dealer, as defined in section 57-43.1-01, unless the license is revoked by the commissioner as provided by law.~~

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which shall be valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 14. Section 57-43.1-15.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-15.1. Revocation of license - Hearing to show cause - Reinstatement.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.
2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of correct tax reports and timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 15. AMENDMENT. Section 57-43.1-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-16. Report Monthly report by dealer to commissioner refiner, supplier, distributor, importer, or exporter required. 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.

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain the information as required by the commissioner including:
 - a. A detailed schedule of motor vehicle fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of motor vehicle fuel sold to a person eligible to purchase the motor vehicle fuel without the tax imposed by this chapter.
 - c. A detailed schedule of motor vehicle fuel sold tax-paid for resale, including a list of persons who purchased the motor vehicle fuel for resale.
 - d. The total number of gallons of motor vehicle fuel sold and used subject to the tax imposed by this chapter.
 - e. The number of gallons of motor vehicle fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month, the number of gallons in inventory

at the close of the calendar month, and any gains or losses experienced.

3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
4. 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 16. Section 57-43.1-16.1 of the North Dakota Century Code is created and enacted as follows:

57-43.1-16.1. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering motor vehicle fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of motor vehicle fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of motor vehicle fuel removed from the terminal by or on behalf of a position holder.
 - c. The number of gallons of motor vehicle fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under penalties of perjury.

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

SECTION 17. Section 57-43.1-16.2 of the North Dakota Century Code is created and enacted as follows:

57-43.1-16.2. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for a license must be made on a form prescribed by the commissioner and contain the information required by the commissioner.
2. A common or contract carrier transporting motor vehicle fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting motor vehicle fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of motor vehicle fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the motor vehicle fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:
 - a. The transporter's name and address.

- b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.
 - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 18. AMENDMENT. Section 57-43.1-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17. Commissioner to audit ~~statement~~ report and assess tax.

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of dealers and, not later than three years after the due date of a return, or three years after the return was filed,~~

whichever period expires later, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the dealer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers, and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit shall be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the statement report, or six years after the statement report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for a refund of tax, and, not later than three years after the due date of the claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's~~ tax return report or in a claim for refund, or if the failure by a ~~dealer~~ person to file a tax return report is due to the fraudulent intent or the willful attempt of the ~~dealer~~ person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time.
5. If, before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the ~~dealer or the claimant~~ person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a ~~dealer or to a~~ consumer person fixes the tax finally and irrevocably unless the ~~dealer or consumer~~ person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the ~~dealer or consumer~~ person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 19. AMENDMENT. Section 57-43.1-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.1. Determination if no ~~return made~~ report is filed. ~~If any motor vehicle fuel dealer, whether or not licensed as such,~~ a person fails, neglects, or refuses to file a motor vehicle fuel tax ~~return~~ report when due, the commissioner shall, on the basis of available information, determine the tax liability ~~of the motor vehicle fuel dealer~~ for the period during which no ~~return~~ report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.1-21. An assessment made by the commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 20. AMENDMENT. Section 57-43.1-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-21. Failure to file report - Penalty - Revocation of license - Excuse for delay and interest - Violations.

1. ~~If the holder of a license to sell motor vehicle fuel~~ a person fails to file the required report ~~required to be filed~~, or to pay the full amount of the tax as required by this chapter, 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 the ~~failure delinquency~~ continues, excepting the month within which the report was required to be filed or the tax became due. ~~The commissioner may revoke the license and, if so, the commissioner shall notify the licenseholder promptly by a notice sent by registered or certified mail to the post-office address of the licenseholder as it appears in the commissioner's records. However, if the report is filed and the tax paid within ten days after the date it becomes due and if it is established under oath that the delay was due to accident or justifiable oversight, then the commissioner may continue the license in full force and effect. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this section~~ subsection.
2. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or

- b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 21. AMENDMENT. Section 57-43.1-24 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-24. ~~Deduction of cost of collecting~~ Tax collection allowance. ~~On making payments to the commissioner as provided in this chapter, the dealer~~ The person required to remit the tax imposed by this chapter shall deduct ~~retain~~ two percent from ~~of~~ the amount of tax due to cover the cost of collecting the tax and transmitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

SECTION 22. AMENDMENT. Section 57-43.1-25 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-25. ~~Records of dealer subject~~ Retention of records - Subject to inspection. ~~The records of all purchases, receipts, sales, distribution, and use of motor vehicle fuel of every dealer, must be retained~~ A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all motor vehicle fuel refined, purchased, imported, or otherwise acquired; of all motor vehicle fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years; and. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.

³⁴⁷ **SECTION 23. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-26. ~~Inventory gains - Losses - Deductions allowed to dealer - Remedies.~~ ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-43.1-16, but the allowance may not exceed one percent of the total received during that month.~~

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same

³⁴⁷ Section 57-43.1-26 was also amended by section 1 of House Bill No. 1462, chapter 528.

manner as motor vehicle fuel purchased, imported, or otherwise acquired.

3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.
4. For purposes of this chapter, it is presumed that all motor vehicle fuel received ~~by each dealer~~ above ~~this~~ the one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of each calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the ~~dealer~~ supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

³⁴⁸ **SECTION 24. AMENDMENT.** Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the ~~dealer~~ supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

SECTION 25. AMENDMENT. Section 57-43.1-28 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-28. Allocation of fuel tax Transfer, deposit, and distribution of funds. ~~The state treasurer shall credit to the highway tax distribution fund the motor fuel tax, including interest received on the tax, collected under the provisions of this chapter.~~ Taxes, license fees, penalties, and interest collected under the provisions of

³⁴⁸ Section 57-43.1-27 was also amended by section 2 of House Bill No. 1462, chapter 528.

this chapter must be transferred to the state treasurer who shall deposit the moneys collected to the highway tax distribution fund. The highway tax distribution fund must be distributed in the manner prescribed by section 54-27-19.

SECTION 26. AMENDMENT. Section 57-43.1-30 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-30. Administration - Assistance authorized - Rules. The commissioner shall ~~administer~~ enforce the provisions of this chapter. The commissioner may employ ~~such~~ assistance and conduct investigations as may be necessary for the efficient administration and enforcement of this chapter and may ~~make~~ adopt and enforce reasonable rules relating to the administration and enforcement of this chapter.

SECTION 27. AMENDMENT. Section 57-43.1-32 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-32. Erroneously or illegally collected taxes. If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that person. The refund must be paid to the person from undistributed funds received from the tax imposed by this chapter and any credit or refund may not be approved or paid unless it is an amount which is in excess of ~~ten~~ five dollars.

SECTION 28. Section 57-43.1-45 of the North Dakota Century Code is created and enacted as follows:

57-43.1-45. Motor vehicle fuel tax for interstate motor carriers - Computation - Credits - Refunds.

1. An interstate motor carrier importing motor vehicle fuel into the state is subject to the motor vehicle fuel tax imposed by this chapter on the number of gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.
2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

SECTION 29. Section 57-43.1-46 of the North Dakota Century Code is created and enacted as follows:

57-43.1-46. Interstate motor carrier required to obtain license - Display - Revocation or cancellation of license - Occasional trip permits in lieu of license.

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.1-44 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.1-44 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

SECTION 30. Section 57-43.1-47 of the North Dakota Century Code is created and enacted as follows:

57-43.1-47. Interstate motor carrier tax reports - Payments - Audits - Assessments.

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.1-44. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.1-28.
2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.1-44 and make those records available to the director or the commissioner for examination.
3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.1-44.

³⁴⁹ **SECTION 31. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a ~~dealer or a retailer~~ person importing or purchasing special fuel for resale.
4. "~~Dealer~~" means ~~any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.~~
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.

³⁴⁹ Section 57-43.2-01 was also amended by section 3 of House Bill No. 1462, chapter 528.

9. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
10. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
11. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
6. 12. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
7. 13. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
8. ~~"Importer for use" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.~~
9. 14. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
15. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
16. "Industrial purpose" means:
- A manufacturing, warehousing, or loading dock operation;
 - Construction;
 - Sand and gravel processing;
 - Well drilling, well testing, or well servicing;
 - Maintenance of business premises, golf courses, or cemeteries;
 - A commercial or contract painting operation;
 - Electrical services;

- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

17. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
40. 18. "Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.
44. 19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
42. 20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
43. 21. "Person" means every natural person, fiduciary individual, partnership, firm, association, joint venture, corporation, or limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit. 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, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.

44. 24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
45. 26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
46. 30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration; ~~of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.~~
47. 31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
48. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
49. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

³⁵⁰ **SECTION 32. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Effective through December 31, 1999) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on all sales to consumers special fuel used and on direct sales of special fuel to a customer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.

³⁵⁰ Section 57-43.2-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 2 of House Bill No. 1130, chapter 527.

5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after December 31, 1999) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel to any consumer sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. ~~The dealer~~ A supplier, distributor, or retailer shall remit the tax imposed by this section on all sales to consumers special fuel used and on direct sales of special fuel to a consumer.
3. ~~The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~ The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

³⁵¹ **SECTION 33. AMENDMENT.** Section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02.2. Refund of tax for special fuel used for heating and or for an agricultural, industrial, or railroad purpose. ~~Any~~ A consumer who purchases or uses any special fuel for heating or for an agricultural, industrial, or railroad purpose, except special fuel used to operate a licensed motor vehicle, on which the special fuel tax imposed by section 57-43.2-02 has been paid, may file a claim with the commissioner for a refund pursuant to chapter 57-43.1. The tax imposed by section 57-43.2-03 must be deducted from the refund.

³⁵² **SECTION 34. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
6. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.

³⁵¹ Section 57-43.2-02.2 was repealed by section 7 of House Bill No. 1462, chapter 528.

³⁵² Section 57-43.2-03 was also amended by section 4 of House Bill No. 1462, chapter 528.

7. The dealer shall person required to remit the tax imposed by this section on all sales to a shall pass the tax on to the consumer.
8. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
9. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 35. AMENDMENT. Section 57-43.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-04.1. Deduction of cost of collecting and remitting Tax collection allowance. ~~On making payments to the commissioner as provided in this chapter, the dealer~~ The person required to remit the tax imposed by this chapter shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner. This provision does not apply to tax on excess inventory losses and does not apply to additional tax assessed during an audit.

SECTION 36. Section 57-43.2-04.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.2. Refund to prevent taxation by multiple jurisdictions. Any person to whom special fuel is sold on which the tax imposed by this chapter has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state, must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. The refund may not be reduced by the one cent per gallon [3.79 liters] tax designated for the township highway aid fund. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.

SECTION 37. Section 57-43.2-04.3 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.3. Refund of tax on tax exempt sales. When a person purchasing special fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 38. Section 57-43.2-04.4 of the North Dakota Century Code is created and enacted as follows:

57-43.2-04.4. 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 provided the accounts charged off included the cost of the fuel as well as the 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 because of a discontinuance of a business or for other valid reason, the amount may be refunded.

SECTION 39. AMENDMENT. Section 57-43.2-05 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-05. ~~Special fuel wholesaler's or dealer's license required Refiner, supplier, distributor, importer, exporter, retailer, and terminal operator required to secure license - License fees.~~ No person may act as a special fuel wholesaler or dealer in this state unless that person is a holder of an uncanceled special fuel wholesaler's or dealer's license issued by the commissioner. Application for a special fuel wholesaler's or dealer's license must be made to the commissioner. The application must be filed upon a form prepared and furnished by the commissioner and must contain such information as the commissioner requires.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, retailer, or terminal operator of special fuel unless that person holds an unrevoked license issued by the commissioner. The commissioner may require a separate license for liquefied petroleum gases.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.
 - d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
 - e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
 - f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.

- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, or terminal operator shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 40. AMENDMENT. Section 57-43.2-07 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-07. ~~Special fuel wholesaler's or dealer's bond~~ Bond or letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, retailer, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of the special fuel taxes imposed by this chapter. A terminal operator or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. As a condition precedent to the issuance of a license, a wholesaler or dealer shall furnish a bond in an amount set by the commissioner, but not less than five hundred dollars, guaranteeing the payment of the special fuels tax collected by the wholesaler or dealer. The bond is subject to approval by the commissioner and must be in effect for at least three years. After a wholesaler or dealer has had a valid license for three or more years, the commissioner may review the wholesaler's or dealer's records and waive the bond requirement. The bond requirement may be reinstated at the discretion of the commissioner. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than one thousand dollars. If the commissioner requires a separate license for liquefied petroleum gases, a separate security is required for that license, and the surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. In lieu of a bond, securities, including letters of credit, approved by the commissioner in such amounts as the commissioner prescribes, may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold at public or private sale, without notice to the depositor, if it becomes necessary in order to recover any tax, penalties, or interest due. The commissioner shall pay all moneys deposited as security with the commissioner under the provisions of this subsection to the state treasurer who shall credit them into a special fund to be known as the "special fuels tax security trust fund". If any tax, penalty, or interest imposed by this chapter is not paid

when due, by the person depositing moneys with the tax commissioner as security for the payment of tax, penalty, or interest imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the tax, penalty, and interest due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the person. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.

3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner, without notice to the principal, if it becomes necessary to cover the special fuel tax, penalties, and interest due.
5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 41. Section 57-43.2-07.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-07.1. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 42. Section 57-43.2-07.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-07.2. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 43. AMENDMENT. Section 57-43.2-08 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-08. Issuance of licenses - Fees Application for license - Issuance of license - Denial of license. Upon receipt of the application and bond in proper form and upon the payment by the applicant of a special fuel wholesaler's or dealer's license fee of ten dollars, the commissioner shall issue to the applicant a license to act as a special fuel wholesaler or dealer. The commissioner may refuse to issue a special fuel wholesaler's or dealer's license to any person who formerly held such a license but which was revoked prior to the time of filing the application, or who is a subterfuge for the real party of interest whose license prior to the time of filing of the application has been revoked, or upon other sufficient cause being shown. Before such refusal the commissioner shall grant the applicant a hearing and give the applicant at least ten days' written notice of the time and place of hearing. Each special fuel wholesaler's or dealer's license is valid until suspended or revoked for cause or otherwise canceled. No special fuel wholesaler's or dealer's license is transferable.

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 44. AMENDMENT. Section 57-43.2-09 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-09. Revocation, cancellation, and surrender of license and bond Revocation of license - Hearing to show cause - Reinstatement. The commissioner may revoke the license of any special fuel wholesaler or dealer for reasonable cause. Before revoking any license the commissioner shall notify the licensee to show cause within fifteen days of the date of the notice why such license should not be revoked. Any time prior to and pending hearing the commissioner may, in the exercise of reasonable discretion, suspend the license. The commissioner shall cancel any license to act as a special fuel wholesaler or dealer immediately upon the surrender of the license by the holder.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of a hearing must be served on the person at least ten days prior to the date established for the hearing.

2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of required tax reports and the timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of the tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 45. AMENDMENT. Section 57-43.2-10 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-10. ~~Special fuel wholesaler's or dealer's records~~ Retention of records - Subject to inspection. ~~For each location where special fuel is sold or delivered to any special fuel dealer or user the special fuel wholesaler or dealer making the sale or delivery shall prepare and maintain such records as the commissioner may reasonably require with respect to all sales and deliveries, and with respect to inventories, receipts, purchases, sales, or other dispositions of special fuel. The records required under this section must be retained for a minimum period of three years and must be available at all reasonable times for examination by the commissioner. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all special fuel refined, purchased, imported, or otherwise acquired; of all special fuel exported, sold, distributed, and used; and of all inventory records, for a period of not less than three years. Inventory records include physical readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection by the commissioner or by any agent or employee authorized by the commissioner during business hours.~~

SECTION 46. AMENDMENT. Section 57-43.2-11 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-11. ~~Records and returns - Penalties and interest - Powers of commissioner~~ Report by refiner, supplier, distributor, retailer, importer, or exporter required.

1. ~~A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require returns and payments of the tax to be made for other than monthly periods. A refiner, supplier, distributor, retailer, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal~~

carrier service before midnight of the due date. The commissioner may require separate reports to be filed covering liquefied petroleum gases.

2. For failure or refusal to keep such records, file returns, and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the penalties and interest as provided in this chapter. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to use an electronic format. The report must contain such information as required by the commissioner including:
 - a. A detailed schedule of special fuel refined, purchased, imported, and exported.
 - b. A detailed schedule of special fuel sold to a person eligible to purchase the special fuel without the tax imposed by this chapter.
 - c. A detailed schedule of special fuel sold tax-paid to a person for resale, including a list of persons who purchased the special fuel for resale.
 - d. The total number of gallons of special fuel sold and used subject to tax imposed by this chapter.
 - e. The number of gallons of special fuel sold tax-exempt to a qualified consumer.
 - f. The number of gallons of special fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The commissioner, for good cause shown, may waive the penalty for failure to pay the tax due or for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in ~~section 57-43.2-09~~; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in ~~sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20~~. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. The tax commissioner may prescribe alternative methods for signing, subscribing, or verifying a report 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.
4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and

make such investigations as are deemed necessary in the administration and enforcement of this chapter.

5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 47. Section 57-43.2-11.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-11.1. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering special fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of special fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of special fuel removed from the terminal by or on behalf of a position holder.
 - c. The number of gallons of special fuel in inventory at the beginning of the calendar month and the number of gallons in inventory at the close of the calendar month for each position holder.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made under 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 48. Section 57-43.2-11.2 of the North Dakota Century Code is created and enacted as follows:

57-43.2-11.2. Common or contract carrier - License required - Records required - Diverted loads - Commissioner to audit records.

1. A common or contract carrier shall obtain a license issued by the commissioner. The application for license must be made on a form

prescribed by the commissioner and contain the information required by the commissioner.

2. A common or contract carrier transporting special fuel in a vehicle, railcar, or vessel into this state from another state or country shall ensure that a bill of lading indicating North Dakota as the destination state has been issued by the terminal or bulk plant from which the fuel was removed. If a bill of lading issued by the terminal or bulk plant indicates a destination other than North Dakota, the transporter shall issue a diversion ticket indicating North Dakota as the destination state. If a bill of lading was not issued by the terminal or bulk plant, the transporter shall issue a bill of lading for each shipment indicating North Dakota as the destination state. A copy of a diversion ticket and bill of lading prepared by the transporter shall be mailed, faxed, or electronically transmitted to the commissioner before the fuel enters the state.
3. A common or contract carrier transporting special fuel in the state shall provide a copy of the bill of lading accompanying the shipment, along with any drop load tickets and diversion tickets issued for the delivered fuel to the refiner, supplier, distributor, importer, retailer, or consumer to whom delivery of the shipment was made.
4. A refiner, supplier, distributor, importer, retailer, or consumer may not knowingly accept delivery of special fuel into storage facilities in this state if that delivery is not accompanied by a bill of lading or diversion ticket issued by the terminal operator, bulk plant operator, or transporter, which specifically indicates North Dakota as the destination state of the special fuel.
5. If a common or contract carrier unloads only a portion of a shipment at a location or if the load is loaded at a location other than what is indicated in the bill of lading or diversion ticket, the transporter shall issue a drop load ticket. If the fuel is dropped at more than one location, the drop load ticket must identify the name and address of all locations and the type of fuel and gallonage dropped. A copy of the ticket must be maintained on board and a copy must accompany the bill of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.
6. A diversion ticket must include the following information:

 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.

- g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.
7. A drop load ticket must include the following:
- a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.
8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 49. AMENDMENT. Section 57-43.2-14 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-14. Commissioner to audit returns report and assess tax.

1. ~~Except as otherwise provided in this section, the commissioner may proceed to audit the returns of special fuel dealers 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, assess additional tax due or issue a tax credit or refund. If any additional tax is found due or if a tax credit applies, the commissioner shall notify the taxpayer in detail of the reason for the increase or decrease. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner~~

is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.

2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a return report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the return, or six years after the return was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, use of the fuel for a purpose entitling the claimant to a refund, and use of the fuel other than in a licensed motor vehicle.
4. If a person gives false or fraudulent information ~~is given~~ in a ~~dealer's tax return report~~ or in a ~~consumer's~~ claim for refund, or if the failure by a ~~dealer person~~ to file a tax ~~return report~~ is due to the fraudulent intent or the willful attempt of the ~~dealer person~~ in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the ~~dealer or claimant person~~ consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
6. A determination of additional tax due issued to a ~~dealer or to a consumer person~~ fixes the tax finally and irrevocably unless the ~~dealer or consumer person~~ against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the ~~dealer or consumer person~~ claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 50. Section 57-43.2-14.1 of the North Dakota Century Code is created and enacted as follows:

57-43.2-14.1. Determination if no report is filed. If a person fails, neglects, or refuses to file a special fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.2-15. An assessment made by the commissioner under this section or section 57-43.2-14 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 51. AMENDMENT. Section 57-43.2-15 of 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 Penalty and interest - Violations.

1. 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 If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, 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 the refusal or failure delinquency continues, excepting the month within which the tax became due. If a person files a false or fraudulent report with intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues.
2. If any special fuel user a consumer 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 delinquency continues, not including the month within which the tax became due. The commissioner, for good cause shown, may waive all or part of the penalty or the interest provided by this section subsection. No licensed special fuel dealer may be held liable for taxes due from a special fuel user. No refiner, supplier, distributor, importer, exporter, or retailer may be held liable for taxes due directly from a consumer.
3. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
 - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 52. AMENDMENT. Section 57-43.2-19 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-19. ~~Distribution Transfer, deposit, and distribution of funds.~~ All taxes, license fees, penalties, and interest collected under this chapter must be ~~promptly~~ transferred to the state treasurer who shall deposit ~~such~~ moneys in a highway tax distribution fund ~~which~~. The highway tax distribution fund must be distributed in the manner as prescribed by law section 54-27-19.

SECTION 53. AMENDMENT. Section 57-43.2-20 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-20. ~~Erroneously or illegally collected taxes.~~ If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from a ~~special fuel dealer~~ any person, the commissioner may permit that ~~special fuel dealer~~ person to take credit against a subsequent tax return for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that ~~special fuel dealer~~ person. The refund must be paid ~~to the special fuel dealer~~ from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount which is in excess of ~~ten~~ five dollars. ~~The commissioner is not required to retain the canceled checks by which any refund has been paid for more than six years from July first of the fiscal year in which the refund check is issued.~~

³⁵³ **SECTION 54. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-21. Inventory gains - Losses- Deductions allowed to dealer - Remedies.

1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct the actual shrinkage of the total gallonage of special fuel received during each calendar month from the statement submitted as required in section 57-43.2-12, but such allowance may not exceed one percent of the total received during the month. Each wholesale dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received during each calendar month from the statement submitted as required in section 57-43.2-12, but this allowance may not exceed two percent of the total received during the month. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.~~

³⁵³ Section 57-43.2-21 was also amended by section 5 of House Bill No. 1462, chapter 528.

2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one percent of all other special fuel received during the period covered by the inventory reconciliation.
2. 4. For the purposes of this chapter, it is presumed that all special fuel received by each dealer over and above the one percent allowance, or the two percent allowance for liquefied petroleum gas, not otherwise accounted for, but not above these allowances, except that gallonage shown as actual inventory based on physical inventory readings at the end of every calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used. The dealer, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 55. AMENDMENT. Section 57-43.2-22 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-22. ~~Rules - Administration - Assistance authorized - Rules.~~ The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter for special fuel wholesalers or dealers and special fuel users. The commissioner may audit and examine the records of special fuel wholesalers or dealers and special fuel users and make other investigations as the commissioner deems necessary in the administration and enforcement of this chapter. If upon audit, examination, or investigation the commissioner finds additional taxes are due, the commissioner may assess the additional taxes, and the penalty and interest must be added as provided in section 57-43.2-15.

SECTION 56. Section 57-43.2-38 of the North Dakota Century Code is created and enacted as follows:

57-43.2-38. Special fuel tax for interstate motor carriers - Computation - Credits - Refunds.

1. An interstate motor carrier importing special fuel into this state is subject to the special fuel tax imposed by section 57-43.2-02 on the number of

gallons [liters] of fuel used in the state to propel licensed motor vehicles upon the public roads or highways in the state.

2. The amount of fuel used in interstate fleet operations by a motor carrier is determined by using a factor, the numerator of which is the total miles [kilometers] operated in this state and the denominator of which is the total miles [kilometers] operated both within and without this state applied to the total of that fuel used both within and without this state.
3. An interstate motor carrier is eligible for tax credits or tax refunds at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

SECTION 57. Section 57-43.2-39 of the North Dakota Century Code is created and enacted as follows:

57-43.2-39. Interstate motor carrier required to obtain license - Display - Revocation or cancellation of license - Occasional trip permits in lieu of license.

1. An interstate motor carrier shall apply to the director for a license subject to the requirements of a cooperative agreement authorized by section 57-43.2-37 and is required to display the license in a manner prescribed under the terms of the agreement.
2. The license issued to an interstate motor carrier is not a franchise or irrevocable and it may not be assigned or transferred.
3. The director shall issue a license to an interstate motor carrier based on the terms of the cooperative agreement authorized by section 57-43.2-37 and the license shall be in force until it is suspended, revoked, surrendered, or expires pursuant to the terms of the agreement.
4. An interstate motor carrier who makes only occasional trips into or through this state may elect to secure occasional trip permits in lieu of the license required by this section. The term "occasional" means no more than one trip into or through the state in any seventy-two-hour period. The commissioner, director, or an agent of the commissioner or director shall issue an occasional trip permit for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner or director.

SECTION 58. Section 57-43.2-40 of the North Dakota Century Code is created and enacted as follows:

57-43.2-40. Interstate motor carrier tax reports - Payments - Audits - Assessments.

1. An interstate motor carrier shall file a tax report with the director and remit to the director any taxes, penalties, and interest due at the time and in the manner prescribed by the terms of a cooperative agreement authorized by section 57-43.2-37. All moneys collected and received under this section must be transmitted monthly by the director to the state treasurer to be transferred and credited in the same manner as provided in section 57-43.2-19.

2. An interstate motor carrier shall obtain, create, maintain, and retain records as required by the terms of a cooperative agreement authorized by section 57-43.2-37 and make those records available to the director or the commissioner for examination.
3. The director or commissioner shall audit the records of an interstate motor carrier at the times and in the manner prescribed by a cooperative agreement authorized by section 57-43.2-37.

SECTION 59. AMENDMENT. Section 57-43.3-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-01. Definitions. As used in this chapter unless the context otherwise requires:

1. "Aviation fuel" means aviation gasoline, kerosene, jet ~~motor~~ fuel, and other motor fuel used by aircraft.
2. "Commission" means the North Dakota aeronautics commission.
3. "Commissioner" means the North Dakota tax commissioner.
4. ~~"Dealer" means aviation fuel dealer.~~ "Common carrier" or "contract carrier" means a person involved in the movement of aviation fuel from a terminal or movement of aviation fuel imported into this state, who is not an owner of the aviation fuel.
5. ~~"User" means aviation fuel user.~~ "Consumer" means a user of aviation fuel. It does not include a supplier, distributor, importer, exporter, or retailer acquiring the fuel for resale.
6. "Distributor" means a person, other than a retailer, who acquires aviation fuel from a supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
7. "Export" means the delivery of aviation fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
8. "Exporter" means a refiner, supplier, or distributor who exports aviation fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
10. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
11. "Import" means the delivery of aviation fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.

12. "Importer" means a refiner, supplier, or distributor who imports aviation fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
13. "Person" means every individual, partnership, firm, joint venture, corporation, limited liability company, estate, business trust, receiver, or any group or combination acting as a unit.
14. "Physical inventory reading" means a measurement of aviation fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
15. "Position holder" means a person holding an inventory position of aviation fuel in a terminal as reflected on the records of the terminal operator; a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal; and a terminal operator who owns aviation fuel in a terminal.
16. "Rack" means a mechanism used to dispense aviation fuel from a terminal.
17. "Refiner" means a person who produces, manufactures, or refines aviation fuel in this state for resale to a consumer.
18. "Retail location" means a site at which aviation fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of an aircraft.
19. "Retailer" means a person who acquires aviation fuel from a supplier or distributor for resale to a consumer at a retail location, and does not include a consumer selling aviation fuel to another consumer.
20. "Sale" means, with respect to aviation fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
21. "Supplier" means a refiner who distributes aviation fuel from a terminal in this state, or any person who acquires aviation fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires aviation fuel by truck or railcar for storage at and distribution from a terminal in this state.
22. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
23. "Terminal" means an aviation fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the aviation fuel may be removed from the rack.
24. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers,

"terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

25. "Wholesale distribution" means the sale of aviation fuel by a supplier or distributor.

SECTION 60. AMENDMENT. Section 57-43.3-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-02. ~~Imposition and collection of tax~~ Tax imposed on aviation fuel. ~~An excise tax of eight cents per gallon [3.79 liters] is hereby imposed on the sale or delivery of aviation fuel by a dealer to a user. The dealer shall collect the tax from the user and pay the tax to the commissioner.~~

1. Except as otherwise provided in this chapter, a tax of eight cents per gallon [3.79 liters] is imposed on all aviation fuel sold or used in this state.
2. A supplier or distributor shall remit the tax imposed by this section on aviation fuel used, on the wholesale distribution of aviation fuel to a retailer, and on direct sales of aviation fuel to a customer.
3. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, an export, or a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the retailer and to the customer. A retailer who paid the tax to the supplier or distributor shall pass the tax on to the consumer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the aviation fuel was sold or used by the person. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 61. AMENDMENT. Section 57-43.3-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-03. Refund of tax. ~~Any user must be reimbursed the tax levied by section 57-43.3-02 pursuant to the provisions of chapter 57-43.1.~~

1. A consumer who paid the tax imposed by section 57-43.3-02 may file a claim for a refund with the commissioner pursuant to the refund provisions in chapter 57-43.1. The tax imposed by section 57-43.3-04 must be deducted from the refund.

2. Any person to whom aviation fuel is sold on which the tax imposed by this chapter has been paid who thereafter removes the fuel from this state for sale or resale in another state or to a state that requires payment of a tax upon the use of the fuel in that state must be granted a refund of the tax that was paid pursuant to this chapter. The refund may be granted only upon application to the commissioner in the manner prescribed by the commissioner and must include proof that fuel for sale or resale in another state was reported to the taxing agency of that state, or in the case of a consumer, proof of payment of the tax imposed by the other state. A claim for refund under this section must be made within one year from the date the fuel was removed to another state for sale, resale, or use in another state.
3. When a person purchasing aviation fuel for resale purposes pays the tax imposed by this chapter and later makes a sale of the fuel to an agency of the United States government, the person may apply to the commissioner for a refund of the tax.

SECTION 62. AMENDMENT. Section 57-43.3-04 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-04. Separate and additional tax imposed Special excise tax levied. ~~In addition to any other tax imposed in this chapter, there is hereby imposed a special excise tax of four percent on the sale of aviation fuel on which a tax is levied by section 57-43.3-02 and which is refunded under the provisions of section 57-43.3-03.~~ Except as otherwise provided in this chapter, a special excise tax of four percent of the cost of the fuel, exclusive of state or federal taxes levied, is imposed on each consumer who claims and receives a refund of the tax imposed by section 57-43.3-02.

SECTION 63. Section 57-43.3-08 of the North Dakota Century Code is created and enacted as follows:

57-43.3-08. Refiner, supplier, distributor, importer, exporter, and terminal operator required to secure license - License fees.

1. A person may not engage in business in this state as a refiner, supplier, distributor, importer, exporter, or terminal operator of aviation fuel unless that person holds an unrevoked license issued by the commissioner.
2. The person shall file an application for a license with the commissioner providing such information as required by the commissioner, and on a form or in a format as required by the commissioner. The information must include:
 - a. The name under which the person intends to transact business in this state.
 - b. The physical location of each place of business to be covered by the license and the mailing address of the location to which forms and correspondence are to be directed.
 - c. If a partnership, the name and address of each of the persons constituting the partnership.

- d. If a domestic corporation, the corporate name, the date of incorporation, and the names and addresses of the directors and corporate officers.
- e. If a foreign corporation, the corporate name, the state and the date of incorporation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- f. If a domestic limited liability company, the limited liability company name, the date of formation, and the names and addresses of the governors and managers.
- g. If a foreign limited liability company, the limited liability company name, the state and the date of formation, the name and address of the resident agent, the location of each place of business, and the date on which the business was established.
- h. Any other information the commissioner may require.

The application must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury. For an individual, partnership, or unincorporated association, the application must be signed by the owner. For a corporation, the application must be signed by an authorized officer. For a limited liability company, the application must be signed by an authorized manager.

3. An applicant for a single or multiple license as a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer shall pay to the commissioner a license fee of twenty dollars. The license fee must be paid at the time the application is made.

SECTION 64. Section 57-43.3-09 of the North Dakota Century Code is created and enacted as follows:

57-43.3-09. Bond or letter of credit required. As a condition precedent to the issuance of a single or multiple license, a supplier, distributor, or importer shall furnish a surety bond, a cash bond, or an approved letter of credit as security to guarantee the payment of aviation fuel tax. A refiner, terminal operator, or an exporter who is not also licensed as a supplier or distributor is exempt from this requirement.

1. The surety bond, cash bond, or letter of credit must be in an amount prescribed by the commissioner but not less than five hundred dollars.
2. The surety bond, cash bond, or letter of credit is subject to approval by the commissioner.
3. After a single or multiple license has been in effect for five or more years, the commissioner may review the person's records and may waive the requirement for a security. The requirement for a security may be reinstated at the discretion of the commissioner.
4. A surety bond or letter of credit provided as security must be kept in the custody of the commissioner and may be used by the commissioner,

without notice to the principal, if it becomes necessary to cover the aviation fuel tax, penalties, and interest due.

5. Money deposited with the commissioner as a cash bond must be made in the form of a cashier's check or bank money order payable to the commissioner. The money received must be paid by the commissioner to the state treasurer and credited by the treasurer into a special fund to be known as the motor fuel tax security trust fund. The money deposited may be used by the commissioner, without notice to the depositor, if it becomes necessary to cover tax, penalties, and interest due. If the money deposited is used to cover unpaid liabilities, the commissioner shall certify the information to the director of the office of management and budget. The office of management and budget shall transmit the money to the commissioner who shall apply as much of the money deposited by the person as is necessary to satisfy the liabilities. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained, the commissioner shall certify the information to the director of the office of management and budget who shall pay the unused money to the depositor.

SECTION 65. Section 57-43.3-10 of the North Dakota Century Code is created and enacted as follows:

57-43.3-10. Qualification for exporter license. As a condition precedent to the issuance of a license to an exporter, the exporter shall furnish proof that the exporter has a valid unrevoked license required by the jurisdiction of import.

SECTION 66. Section 57-43.3-11 of the North Dakota Century Code is created and enacted as follows:

57-43.3-11. Qualification for importer license. As a condition precedent to the issuance of a license to an importer, the importer shall furnish proof that the importer has a valid unrevoked license required by the jurisdiction of export. An importer must also qualify for and apply for a license in this state as a refiner, supplier, or distributor.

SECTION 67. Section 57-43.3-12 of the North Dakota Century Code is created and enacted as follows:

57-43.3-12. Application for license - Issuance of license - Denial of license.

1. Upon receipt and approval of an application for a license, the license fee, and the required security, the commissioner shall issue a license which is valid until it is suspended, revoked for cause, or otherwise canceled. The license is not transferable.
2. A multiple license must be issued to a person who applies and qualifies for more than one type of license.
3. The commissioner may refuse to issue a license to a person who has not provided the required security, who failed to provide the information requested on the application, who previously held a license which was revoked by the commissioner, who is a subterfuge for the real party in interest who previously held a license that was revoked by the commissioner, or upon other sufficient cause being shown. The commissioner shall grant the person the right to a hearing in accordance

with the provisions of chapter 28-32. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.

SECTION 68. Section 57-43.3-13 of the North Dakota Century Code is created and enacted as follows:

57-43.3-13. Revocation of license - Hearing to show cause - Reinstatement.

1. The commissioner may revoke a license for reasonable cause. Before revoking a license, the commissioner shall grant a hearing in accordance with the provisions of chapter 28-32 to allow the person to show cause why the license should not be revoked. Written notice of the hearing must be served on the person at least ten days prior to the date established for the hearing.
2. Before a new license may be issued to a person who is obligated to remit the tax imposed by this chapter and whose license was revoked, the person shall pay to the commissioner the amount of any delinquent tax, penalties, and interest remaining unpaid and must file with the commissioner a surety bond upon which the person is the principal. The bond must be in an amount determined by the commissioner but not less than one thousand dollars. The bond must be payable to the commissioner and be conditioned upon the timely filing of required reports and the timely payment of the full amount of the tax due as required under this chapter. If the person fails to file the required report or to timely pay the full amount of the tax due, the commissioner may require an increase in the amount of the surety bond conditioned to secure at all times the payment of any tax due to the state under this chapter.

SECTION 69. Section 57-43.3-14 of the North Dakota Century Code is created and enacted as follows:

57-43.3-14. Monthly report by refiner, supplier, distributor, importer, or exporter required.

1. A refiner, supplier, distributor, importer, or exporter shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering aviation fuel sold and used during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the person required to file the report is able to file the report using an electronic format. The report must contain such information as required by the commissioner including:
 - a. A detailed schedule of aviation fuel refined, purchased, imported, and exported.

- b. A detailed schedule of aviation fuel sold to a person eligible to purchase the aviation fuel without the tax imposed by this chapter.
 - c. A detailed schedule of the number of gallons of aviation fuel sold to a person with the tax imposed by this chapter, including a person who purchased the aviation fuel for resale.
 - d. The total number of gallons of aviation fuel sold and used subject to the tax imposed by this chapter.
 - e. The number of gallons of aviation fuel sold tax exempt to a qualified consumer.
 - f. The number of gallons of aviation fuel in inventory at the beginning of the calendar month, the number of gallons in inventory at the close of the calendar month, and any gains or losses experienced.
3. The report must be signed by the taxpayer to be valid and must contain a written declaration that it is made and subscribed under penalties of perjury.
 4. 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 70. Section 57-43.3-15 of the North Dakota Century Code is created and enacted as follows:

57-43.3-15. Report by terminal operator required.

1. A terminal operator shall file a monthly report with the commissioner no later than the twenty-fifth day of each calendar month covering aviation fuel received into and removed from the terminal during the preceding calendar month. When the twenty-fifth day of the calendar month falls on a Saturday, Sunday, or legal holiday, the due date is the first working day after the Saturday, Sunday, or legal holiday. When the report is filed by mail, the report is timely if the envelope containing the report is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
2. The report to the commissioner must be on a form prescribed and furnished by the commissioner, or in a format approved by the commissioner. The commissioner may require that all or part of the report be submitted in an electronic format approved by the commissioner, provided the terminal operator is able to file the report in an electronic format. The report must contain such information as required by the commissioner and may include:
 - a. A detailed schedule of aviation fuel received into the terminal for or on behalf of the position holder.
 - b. A detailed schedule of aviation fuel removed from the terminal by or on behalf of a position holder.

of lading that is provided to the refiner, supplier, distributor, importer, retailer, or consumer taking delivery of the fuel.

6. A diversion ticket must include the following information:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The diversion ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination as stated on the original bill of lading.
 - f. The original bill of lading number.
 - g. The location diverted to, including the address to which the fuel was diverted and the destination state.
 - h. The number of gallons of fuel being diverted.
 - i. The type of fuel being diverted.
 - j. Any other information required by the commissioner.

7. A drop load ticket must include the following:
 - a. The transporter's name and address.
 - b. The date and time of issuance.
 - c. The partial load ticket number.
 - d. The name and address of the consignee indicated on the original bill of lading.
 - e. The destination on the original bill of lading or as shown on the diversion ticket, if issued.
 - f. The original bill of lading number and, if available, the diversion ticket number.
 - g. The number of gallons off-loaded at each location.
 - h. The type of fuel off-loaded at each location.
 - i. Any other information required by the commissioner.

8. Except as otherwise provided in this section, the commissioner may audit the records of the common or contract carrier, whether or not licensed by the commissioner, and may impose such penalties as authorized by this chapter.

SECTION 72. Section 57-43.3-17 of the North Dakota Century Code is created and enacted as follows:

57-43.3-17. Credit for taxes paid on worthless accounts and refunds. Taxes paid on aviation 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 provided the accounts charged off included the cost of the fuel as well as the taxes due. If the worthless account is subsequently collected, the tax must be remitted on the account collected. If in any case the credit, or any part of it, cannot be utilized by the supplier or distributor because of a discontinuance of a business or other valid reason, the amount may be refunded.

SECTION 73. Section 57-43.3-18 of the North Dakota Century Code is created and enacted as follows:

57-43.3-18. Commissioner to audit reports and assess tax.

1. The commissioner, or an authorized representative, may audit the records, books, and papers and examine fuel and any equipment used to store, transport, or dispense fuel, of a refiner, supplier, distributor, importer, exporter, terminal operator, retailer, or common or contract carrier. For a person required to file a report, the examination and audit must be done no later than three years after the due date of the report or three years after the report was filed, whichever period expires later. The commissioner is authorized to make assessments of tax, plus penalty and interest, or to issue credits or refunds as determined on the basis of the examination and audit.
2. If it is determined upon audit that the tax due was twenty-five percent or more above the amount reported on a report, the tax may be assessed, or a proceeding in court for the collection of the tax may be begun without such assessment, at any time within six years after the due date of the report, or six years after the report was filed, whichever period expires later.
3. Except as otherwise provided in this chapter, the commissioner may audit any consumer's claim for refund and, not later than three years after the due date of a claim or three years after the claim was filed, whichever period expires later, assess additional tax or issue an additional refund. If additional tax is found due or if an additional tax refund applies, the commissioner shall notify the claimant in detail of the reason for the increase or decrease. For any claim selected for audit, the claimant shall provide additional verification as required by the commissioner of fuel purchases, payment of the tax, and use of the fuel.
4. If a person gives false or fraudulent information in a report or in a claim for refund, or if the failure by a person to file a tax report is due to the fraudulent intent or the willful attempt of the person in any manner to evade the tax, the time limitations in this section do not apply, and the tax may be assessed or a proceeding in court for the collection of the tax may be begun without the assessment, at any time.
5. If before the expiration of the time prescribed in this chapter for the assessment of tax, the commissioner and the person consent in writing to an extension of time for the assessment of the tax, the tax may be assessed at any time prior to the expiration of the period agreed upon.

The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

6. A determination of additional tax due issued to a person fixes the tax finally and irrevocably unless the person against whom it is assessed, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.
7. A determination that a claim for a tax credit or refund is disallowed becomes finally and irrevocably fixed unless the person claiming the refund, within thirty days after the giving of notice of the determination, protests the determination under rules adopted by the commissioner and in the manner provided in chapter 28-32.

SECTION 74. Section 57-43.3-19 of the North Dakota Century Code is created and enacted as follows:

57-43.3-19. Determination if no report filed. If a person fails, neglects, or refuses to file an aviation fuel tax report when due, the commissioner shall, on the basis of available information, determine the tax liability for the period during which no report was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.3-23. An assessment made by the commissioner under this section or section 57-43.3-18 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of the evidence that it is erroneous or excessive.

SECTION 75. Section 57-43.3-20 of the North Dakota Century Code is created and enacted as follows:

57-43.3-20. 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 76. Section 57-43.3-21 of the North Dakota Century Code is created and enacted as follows:

57-43.3-21. Governor and manager liability. If a limited liability company holding a license issued under this chapter 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 governor's or 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 77. Section 57-43.3-22 of the North Dakota Century Code is created and enacted as follows:

57-43.3-22. 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, 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. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central index system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central index system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "state of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central index system without changing its original priority as to property in the county where the lien was filed.

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 the tax as to which the commissioner has indexed notice in the central index system, the commissioner shall index a satisfaction of the lien in the central index system.
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 78. Section 57-43.3-23 of the North Dakota Century Code is created and enacted as follows:

57-43.3-23. Penalty and interest - Violations.

1. If a person fails to file the required report or to pay the full amount of the tax as required by this chapter, there is imposed a penalty of five dollars, or a sum equal to five percent of the tax due, whichever is greater, 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 delinquency continues, excepting the month within which the report was required to be filed or the tax became due. If a person files a false or fraudulent report with the intent to evade the tax imposed by this chapter, there is imposed a penalty equal to ten percent of the deficiency, with interest at the rate of two percent per month on the deficiency, for each calendar month or fraction of a month during which the deficiency continues. The commissioner, for good cause shown, may waive all or any part of the penalty or interest provided by this subsection.
2. A person is guilty of a class A misdemeanor if:
 - a. The person refuses or knowingly or intentionally fails to make and file any report required by this chapter in the manner or within the time required; or
 - b. The person knowingly or with intent to evade or aid in the evasion of the tax imposed by this chapter makes any false statement or conceals any material fact in any application, record, report, or claim for refund provided for in this chapter.

SECTION 79. Section 57-43.3-24 of the North Dakota Century Code is created and enacted as follows:

57-43.3-24. Tax collection allowance. The person required to remit the tax imposed by this chapter shall deduct one percent of the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and transmitting it to the commissioner.

SECTION 80. Section 57-43.3-25 of the North Dakota Century Code is created and enacted as follows:

57-43.3-25. Retention of records - Subject to inspection. A refiner, supplier, distributor, importer, exporter, terminal operator, and retailer shall maintain and retain records of all aviation fuel refined, purchased, imported, or otherwise acquired; all aviation fuel exported, sold, distributed, and used; and all inventory records, for a period of not less than three years. Inventory records include physical

readings, metered readings of sales, delivery tickets, and delivery readings. The records are open to inspection during business hours by the commissioner or by any agent or employee authorized by the commissioner.

SECTION 81. Section 57-43.3-26 of the North Dakota Century Code is created and enacted as follows:

57-43.3-26. Inventory gains - Losses.

1. A supplier or distributor shall take a physical inventory reading of all aviation fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis, and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include aviation fuel at retail locations and aviation fuel stored in a barrel, drum, or other receptacle. The supplier or distributor with retail locations is exempt from the provisions of subsection 2.
2. When sold or used by a supplier or distributor, a gain in aviation fuel inventories is subject to the tax imposed by this chapter in the same manner as aviation fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor is not responsible for the tax imposed by section 57-43.3-02 on any actual loss due to shrinkage or evaporation.
4. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss, subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 82. Section 57-43.3-27 of the North Dakota Century Code is created and enacted as follows:

57-43.3-27. Administration - Assistance authorized - Rules. The commissioner shall enforce the provisions of this chapter. The commissioner may employ assistance and conduct investigations as may be necessary for the administration and enforcement of this chapter and may make and enforce reasonable rules relating to the administration and enforcement of this chapter.

SECTION 83. Section 57-43.3-28 of the North Dakota Century Code is created and enacted as follows:

57-43.3-28. Erroneously or illegally collected taxes. If any taxes, penalties, or interest imposed by this chapter have been erroneously or illegally collected from any person, the commissioner may permit that person to take credit against the tax on a subsequent report for the amount of the erroneous or illegal overpayment. In the alternative, the commissioner shall present a voucher to the office of management and budget for payment of the amount erroneously or illegally collected and a warrant-check must be prepared by that office drawn on the state treasurer payable to that person. The refund must be paid from undistributed funds received from the tax imposed by this chapter and any such refund may not be approved or paid unless it is in an amount that is in excess of five dollars.

SECTION 84. REPEAL. Sections 57-43.1-18, 57-43.1-22, 57-43.1-23, 57-43.1-31, 57-43.1-33, 57-43.1-34, 57-43.1-35, 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-42, 57-43.1-42.1, 57-43.1-43, 57-43.2-06, 57-43.2-13, 57-43.2-16, 57-43.2-17, 57-43.2-18, 57-43.2-23, 57-43.2-24, 57-43.2-25, 57-43.2-26, 57-43.2-27, 57-43.2-28, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-35.1, 57-43.2-36, and 57-43.3-05 of the North Dakota Century Code and sections 57-43.1-20, 57-43.2-04, 57-43.2-12, and 57-43.2-35 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 527

HOUSE BILL NO. 1130

(Finance and Taxation Committee)

(At the request of the Department of Transportation)

FUEL TAX RATE

AN ACT to amend and reenact sections 57-43.1-02 and 57-43.2-02 of the North Dakota Century Code, relating to the tax imposed on motor vehicle fuels and special fuels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵⁴ **SECTION 1. AMENDMENT.** Section 57-43.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-02. (~~Effective through December 31, 1999~~) Tax imposed on motor vehicle fuels.

1. Except as otherwise provided in this section, a tax of twenty cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.
2. The dealer shall collect the tax imposed by this section from the consumer on all sales.
3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.

(~~Effective after December 31, 1999~~) Tax imposed on motor vehicle fuels:

- ~~1. Except as otherwise provided in this section, a tax of seventeen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.~~
- ~~2. The dealer shall collect the tax imposed by this section from the consumer on all sales.~~
- ~~3. Sales of fuel in the original package may be made to a licensed dealer, and the dealer may collect the tax imposed by this chapter, but on sales in the original package to persons other than licensed dealers, the dealer is liable for the tax.~~

³⁵⁴ Section 57-43.1-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 2 of Senate Bill No. 2177, chapter 526.

³⁵⁵ **SECTION 2. AMENDMENT.** Section 57-43.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. ~~(Effective through December 31, 1999)~~ Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. The dealer shall remit the tax imposed by this section on all sales to consumers.
3. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.

~~(Effective after December 31, 1999)~~ Tax imposed:

- ~~1. Except as otherwise provided in this chapter, an excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any consumer. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.~~
- ~~2. The dealer shall remit the tax imposed by this section on all sales to consumers.~~
- ~~3. The dealer may make sales of special fuel to another dealer free of the tax imposed by this chapter.~~

Approved March 19, 1999
Filed March 22, 1999

³⁵⁵ Section 57-43.2-02 was also amended by section 3 of House Bill No. 1183, chapter 336, and section 32 of Senate Bill No. 2177, chapter 526.

CHAPTER 528

HOUSE BILL NO. 1462

(Representatives Timm, Dorso)

SPECIAL FUELS DYES, DEFINITIONS, AND INVENTORY

AN ACT to create and enact section 57-43.2-38 of the North Dakota Century Code, relating to use of dyed special fuel in a licensed motor vehicle and penalties; to amend and reenact sections 57-43.1-26, 57-43.1-27, 57-43.2-01, 57-43.2-03, and 57-43.2-21 of the North Dakota Century Code, relating to definitions for special fuels tax purposes and inventory gains and losses for motor vehicle fuels and special fuels tax purposes; to repeal section 57-43.2-02.2 of the North Dakota Century Code, relating to refund of special fuels taxes; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵⁶ **SECTION 1. AMENDMENT.** Section 57-43.1-26 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-26. Inventory gains - Losses - Deductions allowed to dealer - Remedies. ~~Each dealer of motor vehicle fuel may deduct the actual shrinkage of the total gallonage of motor fuel received during each calendar month from the statement submitted as required in section 57-43.1-16, but the allowance may not exceed one percent of the total received during that month.~~

1. A supplier or distributor shall take a physical inventory reading of all motor vehicle fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include motor vehicle fuel at retail locations and motor vehicle fuel stored in a barrel, drum, or other receptacle.
2. When sold or used by a supplier or distributor, a gain in motor vehicle fuel inventories is subject to the tax imposed by this chapter in the same manner as motor vehicle fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any such loss that is in excess of one-half of one percent of the motor vehicle fuel received during the period covered by the inventory reconciliation.

³⁵⁶ Section 57-43.1-26 was also amended by section 23 of Senate Bill No. 2177, chapter 526.

4. For purposes of this chapter, it is presumed that all motor vehicle fuel received ~~by each dealer~~ above ~~this~~ the one-half of one percent allowance, except that gallonage shown as inventory based on physical inventory readings at the end of each calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used, and the dealer supplier or distributor is liable for the amount of the motor vehicle fuel tax on each gallon [liter] of motor vehicle fuel not accounted for. For purposes of this chapter, motor vehicle fuel refined at a refinery in this state and placed in storage at the refinery, and motor vehicle fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.
5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to a casualty loss, based on proof of the loss as required by the commissioner.

³⁵⁷ **SECTION 2. AMENDMENT.** Section 57-43.1-27 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-27. Sales of motor vehicle fuels to retail outlets - Tax imposed - Credit for losses. When a ~~wholesale dealer~~ supplier or distributor in motor vehicle fuels makes a sale to a retail outlet the ~~wholesale dealer~~ supplier or distributor shall credit the retail outlet with one-half of one percent of the total state motor vehicle fuel tax applied to the gallonage sold. This must appear on the face of the delivery invoice at the time of delivery of the motor vehicle fuel in consideration of evaporation and shrinkage losses and the retail outlet's cost of collection of the tax. On making payments to the commissioner as provided in this chapter, the dealer supplier or distributor shall deduct the total credit allowance granted on sales to retail outlets in motor vehicle fuels under the provisions of this section, in addition to other deductions allowed, from the amount of tax due.

³⁵⁸ **SECTION 3. AMENDMENT.** Section 57-43.2-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.

³⁵⁷ Section 57-43.1-27 was also amended by section 24 of Senate Bill No. 2177, chapter 526.

³⁵⁸ Section 57-43.2-01 was also amended by section 31 of Senate Bill No. 2177, chapter 526.

2. "Commissioner" means the state tax commissioner.
3. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a dealer or a retailer importing or purchasing special fuel for resale.
4. "Dealer" means any special fuel dealer, special fuel wholesaler, or wholesale dealer of liquefied petroleum gas.
5. "Director" means the director of the department of transportation.
6. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
- ~~7.~~ 8. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
- ~~7.~~ 8. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
- ~~8.~~ 9. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use.
- ~~9.~~ 10. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;

- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

- 10. ~~"Kerosene" means a light flammable hydrocarbon fuel or solvent which, for special fuel purposes, is used as heating fuel.~~
- 11. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- 12. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
- 13. "Person" means every natural person, fiduciary, association, 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, as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.
- 14. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
- 15. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
- 16. "Sale" means the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration, of special fuels between special fuel dealers or between a special fuel dealer and a retailer or a consumer.
- 17. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, all gases and liquids which meet the

specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.

18. "Special fuel dealer" means any person in the business of handling special fuel who delivers or sells any special fuel to a special fuel user.
19. "Special fuel wholesaler" means any person who produces, refines, manufactures, blends, or compounds special fuel, or who imports or exports special fuel, other than in the fuel supply tank of a motor vehicle, for distribution to a special fuel dealer for sale and use.
20. "Wholesale dealer of liquefied petroleum gas" means any person who delivers or sells that fuel known as liquefied petroleum gas, commonly called "propane" or "butane", to any retail dealer, or user of liquefied petroleum gas.

³⁵⁹ **SECTION 4. AMENDMENT.** Section 57-43.2-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels; which are exempted from the tax imposed under section 57-43.2-02.
2. ~~The special excise tax applies to all special fuels taxed under section 57-43.2-02 for which taxes are later refunded to any consumer.~~
3. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
4. 3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
5. 4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.

³⁵⁹ Section 57-43.2-03 was also amended by section 34 of Senate Bill No. 2177, chapter 526.

- ~~6.~~ 5. The dealer shall remit the tax imposed by this section on all sales to a consumer.

³⁶⁰ **SECTION 5. AMENDMENT.** Section 57-43.2-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-21. Inventory gains - Losses- Deductions allowed to dealer - Remedies.

1. ~~Each dealer of special fuel other than liquefied petroleum gas is allowed to deduct the actual shrinkage of the total gallonage of special fuel received during each calendar month from the statement submitted as required in section 57-43.2-12, but such allowance may not exceed one percent of the total received during the month. Each wholesale dealer of liquefied petroleum gas may deduct the actual shrinkage of the total gallonage received during each calendar month from the statement submitted as required in section 57-43.2-12, but this allowance may not exceed two percent of the total received during the month. A supplier or distributor shall take a physical inventory reading of all special fuel located in a terminal, underground tank, aboveground tank, railcar, storage tank of a truck, and the storage tank of a bulk delivery truck on a regular basis and shall report the physical readings, inventory gains, and inventory losses to the commissioner in increments not to exceed a twelve-month period. The inventory reconciliation must include special fuel at retail locations and special fuel stored in a barrel, drum, or other receptacle.~~
2. When sold or used by a supplier or distributor, a gain in special fuel inventories is subject to the tax imposed by this chapter in the same manner as special fuel purchased, imported, or otherwise acquired.
3. A supplier or distributor who experiences an actual physical inventory loss due to shrinkage or evaporation is responsible for the tax imposed by this chapter on any loss in excess of two percent of liquefied petroleum gases and one-half of one percent of all other special fuel received during the period covered by the inventory reconciliation.
- ~~2.~~ 4. For the purposes of this chapter, it is presumed that all special fuel received by each dealer ~~over and above the one percent allowance, or the two percent allowance for liquefied petroleum gas, not otherwise accounted for, but not above these allowances, except~~ that gallonage shown as actual inventory based on physical inventory readings at the end of every calendar month the time period covered by the inventory reconciliation, and other allowances provided in this chapter, has been sold, delivered, or used. The dealer, and the supplier or distributor is liable for the amount of the special fuel tax on each gallon [3.79 liters] of special fuel not accounted for. For purposes of this chapter, special fuel refined at a refinery in this state and placed in storage at the refinery, and special fuel brought into the state by pipeline and placed in storage at a pipeline terminal, is not deemed received until it is withdrawn from

³⁶⁰ Section 57-43.2-21 was also amended by section 54 of Senate Bill No. 2177, chapter 526.

the refinery or terminal storage for sale or use in this state, or for shipment or delivery to destinations in this state.

5. The commissioner may allow a tax credit to a supplier or distributor for actual inventory losses due to casualty loss subject to the discretion of the commissioner and based on proof of the loss as required by the commissioner.

SECTION 6. Section 57-43.2-38 of the North Dakota Century Code is created and enacted as follows:

57-43.2-38. Dyed special fuel - Administrative fees - Inspections.

1. Special fuel dyed for federal motor fuel tax exemption purposes is subject to the tax imposed by section 57-43.2-03 and, unless otherwise provided in this section, may not be used in the fuel supply tank of a licensed motor vehicle. The owner or operator of a licensed motor vehicle found to contain dyed special fuel in the fuel supply tank of that vehicle is subject to the tax imposed by section 57-43.2-02 to be determined based on the capacity of the fuel supply tank of the licensed vehicle involved and is subject to administrative fees as follows:
 - a. A two hundred fifty dollar fee for the first violation.
 - b. A five hundred dollar fee for a second violation occurring within three years of a previous violation.
 - c. A one thousand dollar fee for a third violation occurring within three years of two previous violations.
 - d. A five thousand dollar fee for the fourth and subsequent violations occurring within three years of three or more previous violations.
2. Special fuel found in the fuel supply tank of a licensed motor vehicle shall be considered dyed if the fuel contains traces of the dye in an amount sufficient to be found in violation of federal laws and rules.
3. For purposes of enforcing the provisions of this section, the highway patrol, by agreement with the commissioner, may:
 - a. Stop, detain, and inspect a licensed motor vehicle and withdraw a sample of fuel from the fuel supply tank of the vehicle in a manner and in a quantity sufficient to determine whether the fuel is a special fuel and to determine the dye content of the fuel.
 - b. Physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel for coloration, markers, and shipping papers.

Any attempt by a person to prevent, stop, or delay an inspection of fuel or shipping papers by the highway patrol is subject to a civil penalty of not more than one thousand dollars per occurrence.

4. The highway patrol may issue a citation covering any violation of this section, and the person receiving a citation has the right to a hearing

before the tax commissioner in the manner provided in chapter 28-32 if, within thirty days after receiving a citation, the person requests a hearing.

5. This section does not apply to:
 - a. A person who purchased dyed special fuel in another state or Canadian province and imported that fuel into the state in the supply tank of a licensed motor vehicle provided the state or Canadian province where the fuel was purchased does not prohibit its use in that vehicle.
 - b. A state or local government using dyed special fuel in licensed vehicles for purposes of construction, reconstruction, repair, or maintenance of public roads or highways.
6. All administrative fees or civil penalties under this section may be completely or partially waived by the tax commissioner for good cause shown, and any fees or penalties not waived must be collected by the tax commissioner and transferred to the state treasurer and deposited in the state highway fund.

³⁶¹ **SECTION 7. REPEAL.** Section 57-43.2-02.2 of the 1997 Supplement to the North Dakota Century Code is repealed.

SECTION 8. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 1999-2000 interim the application, enforcement, and administration under the fuels tax laws.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 1999.

Approved April 22, 1999
Filed April 22, 1999

³⁶¹ Section 57-43.2-02.2 was amended by section 33 of Senate Bill No. 2177, chapter 526.

CHAPTER 529

HOUSE BILL NO. 1203

(Representatives Wald, Byerly, Grosz)
(Senators Bowman, Urlacher)

GROSS PRODUCTION TAX ALLOCATION

AN ACT to amend and reenact section 57-51-16 of the North Dakota Century Code, relating to the allocation of revenue from oil and gas gross production taxes from unidentified sources; and to provide an effective date.

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 in certain cases. If gross production tax is paid to the commissioner and the reports accompanying such tax are insufficient to enable the commissioner to determine the source, by county, from which it is produced 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 among counties in the same proportions that revenue of the was allocated among counties that received distributions under section 57-51-15 during the year ended June thirtieth. Revenue received by the county under this section must be allocated within the county as provided in subsection 3 of section 57-51-15.

SECTION 2. EFFECTIVE DATE. This Act is effective for allocations of oil and gas gross production tax revenues made after June 30, 1999.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 530

HOUSE BILL NO. 1107

(Natural Resources Committee)
(At the request of the Tax Commissioner)

GROSS PRODUCTION TAX REFUNDS

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the payment and refund of oil and gas gross production tax that is five dollars or less; and to amend and reenact sections 57-51-05 and 57-51-19 of the North Dakota Century Code, relating to when the oil and gas gross production tax on oil is due and payable and the procedure for providing refunds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

Minimum refunds and collections.

1. A refund may not be made by the tax commissioner to any taxpayer unless the amount to be refunded, including interest, is at least five dollars. The tax commissioner shall transfer any amount that is not refunded to a taxpayer under this subsection to the state treasurer for deposit in the same manner as other revenue under this chapter.
2. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalties and interest.

SECTION 2. AMENDMENT. Section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

57-51-05. Payment of tax on ~~quarterly~~ monthly basis - When tax due - When delinquent - Payment by purchaser - By producer - How casinghead gas taxed.

1. The gross production tax on oil or gas, as herein provided, must be paid on a monthly basis. The tax on oil is due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas is due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it becomes delinquent and must be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when ~~such a~~ the request is granted the tax is not delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve

percent per annum from the date the tax was due to the date the tax is paid.

2. On oil or gas sold at the time of production, the gross production tax thereon must be paid by the purchaser, and ~~such the~~ purchaser shall and is hereby authorized to deduct in making settlement with the producer or royalty owner, the amount of tax ~~so~~ paid; provided, that in the event oil on which ~~such the~~ gross production tax becomes due is not sold at the time of production but is retained by the producer, the tax on ~~such the~~ oil not ~~so~~ sold must be paid by the producer ~~for himself~~ including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner ~~such the~~ producer has the right to deduct the amount of ~~such the~~ tax ~~so~~ paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time ~~such the~~ tax becomes due with the amount of the tax paid.
3. Gas when produced and utilized in any manner, except when used for fuel or otherwise used in the operation of any lease or premises in the drilling for or production of oil or gas therefrom, or for repressuring thereon, must be considered for the purpose of this chapter, as to the amount utilized, as gas actually produced and saved.

SECTION 3. AMENDMENT. Section 57-51-19 of 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~~ office of management and budget, ~~the state auditor shall issue a warrant shall be issued to the taxpayer~~ 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 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.

Approved March 8, 1999
Filed March 9, 1999

TOWNSHIPS

CHAPTER 531

SENATE BILL NO. 2238

(Senators Kroeplin, O'Connell, Wardner)
(Representatives D. Johnson, Mahoney)

TOWNSHIP EMERGENCY MEETINGS

AN ACT to amend and reenact section 58-06-04 of the North Dakota Century Code, relating to emergency meetings of boards of township supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-06-04 of the North Dakota Century Code is amended and reenacted as follows:

58-06-04. May hold adjourned and special meetings. The board of township supervisors may adjourn from time to time and in cases of emergency may hold special meetings on the call of the township clerk ~~on three days' notice.~~

Approved March 15, 1999

Filed March 16, 1999

TRUSTS, USES, AND POWERS

CHAPTER 532

SENATE BILL NO. 2169

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM PRINCIPAL AND INCOME ACT

AN ACT to create and enact chapter 59-04.2 of the North Dakota Century Code, relating to the Uniform Principal and Income Act (1997); and to repeal chapter 59-04.1 of the North Dakota Century Code, relating to the Uniform Principal and Income Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 59-04.2 of the North Dakota Century Code is created and enacted as follows:

59-04.2-01. (102) Definitions. In this chapter:

1. "Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.
2. "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.
3. "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.
4. "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in sections 59-04.2-09 through 59-04.2-23.
5. "Income beneficiary" means a person to whom net income of a trust is or may be payable.
6. "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.
7. "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

8. "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.
9. "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.
10. "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.
11. "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.
12. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

59-04.2-02. (103) Fiduciary duties - General principles.

1. In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of sections 59-04.2-04 through 59-04.2-08, a fiduciary:
 - a. Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter.
 - b. May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter.
 - c. Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration.
 - d. Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.
2. In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

59-04.2-03. (104) Trustee's power to adjust. (Reserved)

59-04.2-04. (201) Determination and distribution of net income. After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

1. A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in sections 59-04.2-06 through 59-04.2-29 which apply to trustees and the rules in subsection 5. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.
2. A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in sections 59-04.2-06 through 59-04.2-29 which apply to trustees and by:
 - a. Including in net income all income from property used to discharge liabilities.
 - b. Paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction.
 - c. Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.
3. A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under subsection 2 or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.
4. A fiduciary shall distribute the net income remaining after distributions required by subsection 3 in the manner described in section 59-04.2-05 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

5. A fiduciary may not reduce principal or income receipts from property described in subsection 1 because of a payment described in section 59-04.2-24 or 59-04.2-25 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

59-04.2-05. (202) Distribution to residuary and remainder beneficiaries.

1. Each beneficiary described in subsection 4 of section 59-04.2-04 is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.
2. In determining a beneficiary's share of net income, the following rules apply:
 - a. The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.
 - b. The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.
 - c. The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.
 - d. The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.
3. If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.
4. A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the

disposition of a principal asset if this section applies to the income from the asset.

59-04.2-06. (301) When right to income begins and ends.

1. An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.
2. An asset becomes subject to a trust:
 - a. On the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;
 - b. On the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or
 - c. On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.
3. An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection 4, even if there is an intervening period of administration to wind up the preceding income interest.
4. An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

59-04.2-07. (302) Apportionment of receipts and disbursements when decedent dies or income interest begins.

1. A trustee shall allocate an income receipt or disbursement other than one to which subsection 1 of section 59-04.2-04 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.
2. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.
3. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 59-04.2-09 applies are deemed to be due on the date fixed by the entity for determining who is

entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

59-04.2-08. (303) Apportionment when income interest ends.

1. In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.
2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.
3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

59-04.2-09. (401) Character of receipts.

1. In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 59-04.2-10 applies, a business or activity to which section 59-04.2-11 applies, or an asset-backed security to which section 59-04.2-23 applies.
2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
3. A trustee shall allocate the following receipts from an entity to principal:
 - a. Property other than money.
 - b. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.
 - c. Money received in total or partial liquidation of the entity.
 - d. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

4. Money is received in partial liquidation:
 - a. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
 - b. If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's yearend financial statements immediately preceding the initial receipt.
5. Money is not received in partial liquidation, nor may it be taken into account under subdivision b of subsection 4, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.
6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

59-04.2-10. (402) Distribution from trust or estate. A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 59-04.2-09 or 59-04.2-23 applies to a receipt from the trust.

59-04.2-11. (403) Business and other activities conducted by trustee.

1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.
2. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.
3. Activities for which a trustee may maintain separate accounting records include retail, manufacturing, service, and other traditional business activities; farming; raising and selling livestock and other animals; management of rental properties; extraction of minerals and other natural resources; timber operations; and activities to which section 59-04.2-22 applies.

59-04.2-12. (404) Principal receipts. A trustee shall allocate to principal:

1. To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.
2. Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 59-04.2-09 through 59-04.2-23.
3. Amounts recovered from third parties to reimburse the trust because of disbursements described in subdivision g of subsection 1 of section 59-04.2-25 or for other reasons to the extent not based on the loss of income.
4. Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.
5. Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.
6. Other receipts as provided in sections 59-04.2-16 through 59-04.2-23.

59-04.2-13. (405) Rental property. To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

59-04.2-14. (406) Obligation to pay money.

1. An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.
2. A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.
3. This section does not apply to an obligation to which section 59-04.2-17, 59-04.2-18, 59-04.2-19, 59-04.2-20, 59-04.2-22, or 59-04.2-23 applies.

59-04.2-15. (407) Insurance policies and similar contracts.

1. Except as otherwise provided in subsection 2, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.
2. A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to section 59-04.2-11, loss of profits from a business.
3. This section does not apply to a contract to which section 59-04.2-17 applies.

59-04.2-16. (408) Insubstantial allocations not required. (Reserved)**59-04.2-17. (409) Deferred compensation, annuities, and similar payments.**

1. In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.
2. To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.
3. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.
4. If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.
5. This section does not apply to payments to which section 59-04.2-18 applies.

59-04.2-18. (410) Liquidating asset.

1. In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to section 59-04.2-17, resources subject to section 59-04.2-19, timber subject to section 59-04.2-20, an activity subject to section 59-04.2-22, an asset subject to section 59-04.2-23, or any asset for which the trustee establishes a reserve for depreciation under section 59-04.2-26.
2. A trustee shall allocate to income ten percent of the receipts from a liquidating asset and the balance to principal.

59-04.2-19. (411) Minerals, water, and other natural resources.

1. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:
 - a. If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.
 - b. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.
 - c. If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, ninety percent must be allocated to principal and the balance to income.
 - d. If an amount is received from a working interest or any other interest not provided for in subdivision a, b, or c, ninety percent of the net amount received must be allocated to principal and the balance to income.
2. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent of the amount must be allocated to principal and the balance to income.
3. This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.
4. If a trust owns an interest in minerals, water, or other natural resources on August 1, 1999, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before August 1, 1999. If the trust acquires an interest in minerals, water, or

other natural resources after August 1, 1999, the trustee shall allocate receipts from the interest as provided in this chapter.

59-04.2-20. (412) Timber.

1. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:
 - a. To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;
 - b. To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;
 - c. To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in subdivisions a and b; or
 - d. To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to subdivision a, b, or c.
2. In determining net receipts to be allocated pursuant to subsection 1, a trustee shall deduct and transfer to principal a reasonable amount for depletion.
3. This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.
4. If a trust owns an interest in timberland on August 1, 1999, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before August 1, 1999. If the trust acquires an interest in timberland after August 1, 1999, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

59-04.2-21. (413) Property not productive of income. (Reserved)

59-04.2-22. (414) Derivatives and options.

1. In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.
2. To the extent that a trustee does not account under section 59-04.2-11 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

3. If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

59-04.2-23. (415) Asset-backed securities.

1. In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 59-04.2-09 or 59-04.2-17 applies.
2. If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.
3. If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten percent of the payment to income and the balance to principal.

59-04.2-24. (501) Disbursements from income. A trustee shall make the following disbursements from income to the extent that they are not disbursements to which subdivision b or c of subsection 2 of section 59-04.2-04 applies:

1. One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee.
2. One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests.
3. All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest.
4. Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

59-04.2-25. (502) Disbursements from principal.

1. A trustee shall make the following disbursements from principal:
 - a. The remaining one-half of the disbursements described in subsections 1 and 2 of section 59-04.2-24;
 - b. All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
 - c. Payments on the principal of a trust debt;
 - d. Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
 - e. Premiums paid on a policy of insurance not described in subsection 4 of section 59-04.2-24 of which the trust is the owner and beneficiary;
 - f. Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
 - g. Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.
2. If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

59-04.2-26. (503) Transfers from income to principal for depreciation.

1. In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.
2. A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:
 - a. Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

- b. During the administration of a decedent's estate; or
 - c. Under this section if the trustee is accounting under section 59-04.2-11 for the business or activity in which the asset is used.
3. An amount transferred to principal need not be held as a separate fund.

59-04.2-27. (504) Transfers from income to reimburse principal.

1. If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.
2. Principal disbursements to which subsection 1 applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:
 - a. An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
 - b. A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
 - c. Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
 - d. Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
 - e. Disbursements described in subdivision g of subsection 1 of section 59-04.2-25.
3. If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection 1.

59-04.2-28. (505) Income taxes.

1. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.
2. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.
3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:
 - a. From income to the extent that receipts from the entity are allocated to income.

- b. From principal to the extent that:
 - (1) Receipts from the entity are allocated to principal; and
 - (2) The trust's share of the entity's taxable income exceeds the total receipts described in subdivision a and paragraph 1 of subdivision b.
4. For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

59-04.2-29. (506) Adjustments between principal and income because of taxes.

1. A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:
 - a. Elections and decisions, other than those described in subsection 2, that the fiduciary makes from time to time regarding tax matters;
 - b. An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
 - c. The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.
2. If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

59-04.2-30. Certain charitable remainder unitrusts.

1. Notwithstanding any other provision of this chapter, unless the trust instrument directs otherwise, an increase in the value of the obligations described in this subsection owned by a charitable remainder unitrust of the type authorized in section 664(d)(3) of the Internal Revenue Code [26 U.S.C. 664(d)(3)] or its successor provisions is distributable as income when it becomes available for distribution:
 - a. A zero coupon bond;

- b. An annuity contract before annuitization;
 - c. A life insurance contract before the death of the insured;
 - d. An interest in a common trust fund as defined in section 584 of the Internal Revenue Code [26 U.S.C. 584] or its successor provisions;
 - e. An interest in a partnership as defined in section 7701 of the Internal Revenue Code [26 U.S.C. 7701] or its successor provisions; and
 - f. Any other obligation for the payment of money that is payable at a future time in accordance with a fixed, variable, or discretionary schedule of appreciation in excess of the price at which it was issued.
2. The increase in value of the obligations described in subsection 1 is distributable to the beneficiary who was the income beneficiary at the time of the increase.
 3. For purposes of this section, the increase in value of an obligation described in subsection 1 is available for distribution only when the trustee receives cash on account of the obligation. If the obligation is surrendered or liquidated partially, the cash available must be attributed first to the increase.

SECTION 2. REPEAL. Chapter 59-04.1 of the North Dakota Century Code is repealed.

Approved March 4, 1999
Filed March 4, 1999

WAREHOUSING AND DEPOSITS

CHAPTER 533

HOUSE BILL NO. 1156

(Agriculture Committee)

(At the request of the Public Service Commission)

WAREHOUSEMAN DISPUTES AND CONTRACTS

AN ACT to create and enact three new subsections to section 60-04-03.1 of the North Dakota Century Code, relating to warehousemen; to amend and reenact subsections 3 and 5 of section 60-02-01, subsection 1 of section 60-02-05, sections 60-02-07, 60-02-17, subsection 1 of section 60-02-24, sections 60-02-27, and 60-02-37 of the North Dakota Century Code, relating to warehouseman disputes, warehouse storage contracts, and hay buyers; and to repeal section 60-02-17.1 of the North Dakota Century Code, relating to warehouse charges for grain owned by the United States.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁶² **SECTION 1. AMENDMENT.** Subsections 3 and 5 of section 60-02-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown ~~domestic~~ grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, or shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a ~~warehouseman doing manufacturing business only,~~ processor to receive, store, or purchase any lot or kind of grain at said ~~mill~~ facility.

SECTION 2. AMENDMENT. Subsection 1 of section 60-02-05 of the North Dakota Century Code is amended and reenacted as follows:

³⁶² Section 60-02-01 was also amended by section 1 of Senate Bill No. 2153, chapter 534.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints of the grain in dispute may be taken together by both parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. ~~90-487~~ 103-354; ~~82~~ 108 Stat. ~~764~~ 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.

SECTION 3. AMENDMENT. Section 60-02-07 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - How obtained - Fee - Financial statement.

An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is two hundred fifty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, four hundred dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand [7047.8 to not more than 17619.54 cubic meters], and five hundred dollars for a warehouse of a bushel capacity of more than five hundred thousand [17619.54 cubic meters]. 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 keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts 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 is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 4. AMENDMENT. Section 60-02-17 of the North Dakota Century Code is amended and reenacted as follows:

60-02-17. Warehouse and storage contract - Storage rates - Terminal delivery. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

"This grain is received, insured, and stored subject to the following charges: ~~one-tenth of one cent per net bushel [35.24 liters] per day, except for dry edible beans which are subject to a daily storage rate fixed at the time of delivery no greater than one-half of one cent per net hundredweight [45.36 kilograms] per day, provided, however, that no storage may be charged for grain so stored for fifteen days from date of delivery if such grain is sold within such fifteen-day period; however, if such grain is not sold within the fifteen days, storage charges commence from the date a warehouse receipt was issued. All grain received for storage is subject to a charge of seven cents per net bushel [35.24 liters], except for flax which is subject to a charge of seven cents per gross bushel [35.24 liters] and dry edible beans which are subject to a charge of ten cents per net hundredweight [45.36 kilograms]. Grain purchased by the warehouseman is exempt from the receiving and redelivery charges. Except for dry edible beans, upon laws and rules of the state of North Dakota, the terms of this contract and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of a delivery charge per gross bushel [35.24 liters] of five cents on flax and five cents per net bushel [35.24 liters] on all other grains and all other stated lawful charges accrued up to the time of surrender of this receipt, the above all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of the above any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered. Dry edible beans will be delivered to the holder in accordance with the warehouseman's delivery policy upon the surrender of this receipt and payment or tender of all lawful charges accrued up to the time of surrender including the charge for delivery contained in the delivery policy."~~

A warehouseman may charge a different storage rate for grain stored for the United States government under the Food Security Wheat Reserve Act, Pub. L. 101-624, as amended, if the rate is filed with the commission and identified on the warehouse receipt. A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or

redelivering grain. This fee schedule must be filed with the commission as a part of its warehouse license application or annual renewal. These fees must be stated on the warehouse receipt issued for the grain. The fees may be changed upon filing a revised schedule with the commission.

SECTION 5. AMENDMENT. Subsection 1 of section 60-02-24 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission, ~~which.~~ The report shall must contain or be verified by a written declaration that it is made under the penalties of perjury. Such ~~The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make the information available for use by other governmental entities, but the commission may not release the information in a manner that jeopardizes the confidentiality of individual licensees.~~

SECTION 6. AMENDMENT. Section 60-02-27 of the North Dakota Century Code is amended and reenacted as follows:

60-02-27. Federal grades to control - Grades to be posted. All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. They shall post in a conspicuous place in their warehouse the official grades so established and also any change that may be made from time to time. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with their policy which must be filed with the commission and posted in a conspicuous place in their warehouse. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards. The commission, after hearing, may prohibit the use of nonfederal grades.

SECTION 7. AMENDMENT. Section 60-02-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02-37. Destruction of warehouse - Duty to notify commission. In case of the destruction by fire or other cause of any licensed public warehouse, the licensee thereof shall notify the commission ~~by telephone and registered or certified mail~~ within twenty-four hours after such loss.

SECTION 8. Three new subsections to section 60-04-03.1 of the North Dakota Century Code are created and enacted as follows:

Unencumbered accounts receivable for grain sold at the time or following the filing of a claim that precipitates an insolvency.

Unencumbered equity in grain hedging accounts.

Unencumbered grain product assets.

SECTION 9. REPEAL. Section 60-02-17.1 of the North Dakota Century Code is repealed.

Approved April 14, 1999
Filed April 14, 1999

CHAPTER 534**SENATE BILL NO. 2153**

(Agriculture Committee)

(At the request of the Public Service Commission)

GRAIN BUYERS AND INSOLVENCY PROCEEDINGS

AN ACT to create and enact chapter 60-02.1 of the North Dakota Century Code, relating to grain buyers and grain buyer insolvency proceedings; to amend and reenact subsection 5 of section 60-02-01, sections 60-03-01, 60-03-01.1, 60-03-02, 60-03-04, 60-03-04.1, 60-03-05, 60-03-08, 60-03-10, 60-03-11, 60-03-12, 60-03-14, 60-03-17, and 60-03-18 of the North Dakota Century Code, relating to the definition of a public warehouse, hay buyer procedures, and insolvency proceedings; to repeal section 60-03-03 of the North Dakota Century Code, relating to hay buyer procedures; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁶³ **SECTION 1. AMENDMENT.** Subsection 5 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act, 7 U.S.C. 241 et seq., in which grain is received for storing, buying, selling, ~~or shipping,~~ or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a ~~warehouseman doing manufacturing business only;~~ processor to receive, store, or purchase any lot or kind of grain at said ~~mill~~ facility.

SECTION 2. Chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

60-02.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
2. "Credit-sale contract" means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.

³⁶³ Section 60-02-01 was also amended by section 1 of House Bill No. 1156, chapter 533.

3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tam mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain 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.
 - 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.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

60-02.1-02. Commission - Powers and duties. The duties imposed and the powers conferred by this chapter devolve upon the commission.

60-02.1-03. Duties and powers of the commission. The commission has the duty and power to:

1. Exercise general supervision of grain buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any books, documents, and records.

4. Make all proper rules for carrying out and enforcing any law in this state regarding grain buyers.

60-02.1-04. Federal licensed inspector - Appointed by commission. The commission may employ a federal licensed inspector whose duties are hereinafter prescribed, and such other employees as may be necessary to carry out the provisions of this chapter.

60-02.1-05. Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States. The person requesting the inspection service shall pay for the inspection. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) & (d)] and under 7 CFR 800.125-800.140. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the interested parties. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was transferred. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service shall pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

60-02.1-06. Notice of procedures for resolving disputes over grain. A facility-based grain buyer shall post a notice containing the procedures specified in section 60-02.1-05 for resolving disputes. The commission shall prescribe the form of the notice and shall provide a copy of the notice to each facility-based grain buyer. The facility-based grain buyer shall post the notice in the grain inspection room of the facility. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. The license expires on July thirty-first of each year. A facility-based grain buyer must obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities 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 facilities, and scale tickets, and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is two hundred fifty dollars. The annual license fee for a roving grain buyer is one hundred fifty dollars.

If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

60-02.1-08. Bond filed by grain buyer. Before any license is issued to any grain buyer under this chapter, the applicant for such license shall file a bond with the commission which must:

1. Be in a sum not less than five thousand dollars.
2. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commission that the surety bond will be canceled ninety days after receipt of the notice of cancellation.
3. Run to the state of North Dakota for the benefit of all persons selling grain to or through the grain buyer.
4. Be conditioned:
 - a. For the faithful performance of the licensee's duties as a grain buyer.
 - b. For compliance with the provisions of law and the rules of the commission relating to the purchase of grain by such grain buyer.
5. For facility-based grain buyers, specify the location of each facility intended to be covered by such bond.
6. Be for the specific purpose of:
 - a. Protecting the sellers of grain.

- b. Covering the costs incurred by the commission in the administration of the licensee's insolvency.
7. Not accrue to the benefit of any person entering into a credit-sale contract with a grain buyer.
8. In no event shall the aggregate liability of the surety under a bond accumulate for each successive annual license renewal period during which such bond is in force but, for losses during any annual license renewal period, shall be limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.

The commission may require an increase in the amount of any bond, from time to time, as it deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, such cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts. Only one bond may be required for any series of facilities operated by a facility-based grain buyer, and such bond must be construed to cover such facilities as a whole and not a specific amount for each.

60-02.1-09. Bond cancellation - Release of surety. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period. Unless the grain buyer files a new bond at least thirty days before liability ceases, the commission, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new bond has been filed and approved by the commission.

60-02.1-10. Grain buyer license to be posted or carried - Penalty. The license obtained by a facility-based grain buyer shall be posted in a conspicuous place in the buyer's facility. A roving grain buyer shall have his license in his possession at all times. A grain buyer who transacts business without first procuring a license and giving a bond is guilty of a class B misdemeanor.

60-02.1-11. Revocation and suspension. The commission may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the commission's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing.

60-02.1-12. Scale ticket - Contents. Every grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable receipt for each load of grain received. Receipts must be numbered consecutively and one copy of each receipt must be retained and remain as a permanent record. The original receipt must be delivered to the person from whom the grain is received, upon receipt of each load of grain.

60-02.1-13. Penalty. Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter, if punishment is not specifically provided for, is guilty of an infraction.

60-02.1-14. Credit-sale contracts. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-15 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. However, if the license of the grain buyer is transferred to another grain buyer or licensed warehouseman, credit-sale contracts, if so agreed by the seller and transferee, may be assigned to the transferee.

60-02.1-15. Discrimination by grain buyer prohibited. A grain buyer may not discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
2. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;
3. In regard to the persons offering such grain for sale; or
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

A grain buyer is not required to receive any grain that is heating or otherwise out of condition. A facility-based grain buyer shall post grain prices paid in a conspicuous place in the office or driveway of the buyer's place of business.

60-02.1-16. Records required to be kept by grain buyers. Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the commission, and shall make such reports of purchases of grain as may be required by the rules made by the commission. The commission at all times shall have access to such accounts, records, and memoranda.

60-02.1-17. Reports to be made by grain buyers - Penalty for failure. Each licensed and bonded grain buyer shall:

1. Prepare for each month a report giving facts and information called for on the form of report prepared by the commission. The report must contain or be verified by a written declaration that it is made under the penalties of perjury. The report may be called for more frequently if the commission deems it necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commission may make this information available for use by other governmental entities, but the information may not be released by those entities in a manner that jeopardizes the confidentiality of individual licensees.
2. File the report with the commission not later than the last day of the following month. Failure to file this report promptly will be considered cause for revoking the grain buyer license after due notice and hearing.
3. Keep a separate account of the grain business, if the grain buyer is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.

A license may not be reissued to any grain buyer who fails to make a required report.

60-02.1-18. Standard weights to be used - Exception. A person purchasing grain may not use any measure for such grain other than the standard bushel, and a number of pounds may not be used or called a bushel other than the number of pounds provided by law as the standard weight of the kind of grain in question, except that during the months of October and November, not exceeding eighty-two pounds [37.19 kilograms], and during the months of December and January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

60-02.1-19. Federal grades to control - Grades to be posted. All grain buyers shall purchase grain, except dry edible beans, in accordance with the official grades established from time to time by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law. A facility-based grain buyer shall post in a conspicuous place in the buyer's facility the official grades so established and also any change that may be made from time to time. A grain buyer of dry edible beans shall purchase and deliver beans in accordance with their policy, which must be filed with the commission and, if applicable, posted in a conspicuous place in the buyer's facility. Other grading standards may be used if mutually agreed to in writing by the grain buyer and the owner of the grain. However, the owner may demand the use

of federal grading standards. After hearing, the commission may prohibit the use of nonfederal grades.

60-02.1-20. Grading of grain. All grain buyers before testing for grade any grain handled by them shall remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter. Any grain buyer within this state, who violates this provision is guilty of a class B misdemeanor.

60-02.1-21. Grain to be kept insured for benefit of owner by grain buyer. A license may not be issued to a facility-based grain buyer unless all company-owned and unconverted scale ticket grain is kept fully insured at the expense of the grain buyer for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the commissioner of insurance. An insurance policy may not be transferred or assigned to any person for any purpose.

60-02.1-22. Insurance - Cancellation - Suspension of license. An insurance company shall give at least sixty days' notice to the commission and the insured by registered mail return receipt requested before cancellation of an insurance policy required in section 60-02.1-21. Unless the grain buyer files proof of new or renewed insurance at least thirty days before the existing policy ceases, the commission, without hearing, shall immediately suspend the grain buyer's license and the suspension may not be removed until a new policy has been filed and approved by the commission.

60-02.1-23. Destruction of grain - First lien by holder of outstanding receipt. The holder of an unconverted scale ticket or other comparable receipt issued by any facility-based grain buyer shall have a first lien, to the extent of the value of the grain at the time of loss at the place where held, on all insurance of the grain buyer for any loss sustained by the receipt holder, on account of the loss of such grain by fire, tornado, or any other cause covered by such insurance policy.

60-02.1-24. Destruction of facility - Duty to notify commission. In case of the destruction by fire or other cause of any facility operated by a facility-based grain buyer, the licensee thereof shall notify the commission within twenty-four hours after such loss.

60-02.1-25. Facility not to be closed without permission from commission - Penalty. Every facility operated by a facility-based grain buyer shall be kept open for business in order to serve the public. Upon application and sufficient cause shown, the commission may allow any such facility to be closed for such length of time as may be stated in the order issued therein. An application to close shall make provision for the redemption of outstanding receipts satisfactory to the commission. Any such grain buyer who shall close a facility without first having received permission from the commission to close shall be guilty of a class A misdemeanor and the license issued may be revoked by the commission.

60-02.1-26. Transfer of facility - Redemption of receipts. Whenever a facility-based grain buyer desires to transfer a facility, either by sale or lease to any other individual, firm, or corporation, the grain buyer shall:

1. Notify the commission first of its intention to transfer the facility, giving the name and address of the proposed lessee or purchaser.

2. Provide related information as may be required by the commission.
3. Surrender to the commission its license for cancellation and at such time the proposed lessee or purchaser shall apply in due form for a new license and tender a new bond for approval by the commission, whereupon, it first being duly satisfied that all the outstanding receipts have been redeemed, or that the redemption thereof has been provided for, the commission may issue a new license to the lessee or purchaser.

No sale, lease, or transfer of any facility will be recognized or permitted by the commission except where made in accordance with the provisions of this section.

60-02.1-27. Going out of business - Redemption of receipts. When a facility-based grain buyer ceases business through closure, the destruction of a facility by fire or other cause, or through insolvency, such grain buyer shall redeem all outstanding receipts at the price prevailing on the date the facility was closed, destroyed, or became insolvent. The holder of such receipts, upon due notice, must accept this price and surrender the receipts. Any facility-based grain buyer who voluntarily ceases business or fails to renew an existing grain buyer license or whose grain buyer license is revoked shall notify the commission and all receiptholders of such closing and redeem all such receipts at the price prevailing on the date the business closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the receipt. On commingled grain the value of over and under deliveries in quantity, grade, and protein shall be settled in cash and priced on the market on the day of closing.

60-02.1-28. Insolvency of grain buyer. A licensee is insolvent when the licensee defaults in payment for grain purchased or marketed by the licensee.

60-02.1-29. Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, North Dakota for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. Upon notice to the licensee as the court shall prescribe, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the claimants that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

60-02.1-30. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds of insurance policies on destroyed grain.

3. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.

60-02.1-31. Joinder of surety - Deposit of proceeds. Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the claimants, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

60-02.1-32. Notice to claimants. Upon its appointment the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

60-02.1-33. Remedy of claimants. No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Provisions of this chapter do not prohibit any claimant, either individually or in conjunction with other claimants, from pursuing concurrently any other remedy against the person or property of the licensee.

60-02.1-34. Commission to marshal trust assets. Upon its appointment the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

60-02.1-35. Power of commission to prosecute or compromise claims. The commission may:

1. Prosecute any action provided in sections 60-02.1-28 through 60-02.1-38 in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action when it will be in the best interests of the claimants.
4. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

60-02.1-36. Money received by trustee - Deposited in Bank of North Dakota.

All funds received by the commission as trustee must be deposited in the Bank of North Dakota.

60-02.1-37. Report of trustee to court - Approval - Distribution. Upon the receipt and evaluation of claims the commission shall file with the court a report showing the amount and validity of each claim after recognizing relevant:

1. Liens or pledges.
2. Assignments.
3. Deductions due to advances or offsets accrued in favor of the licensee.
4. In case of cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.

The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all claimants.

Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

60-02.1-38. Filing fees and court costs - Expenses. The commission may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commission in the prosecution of the action and the cost of employing outside counsel may be paid from the trust fund. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of sections 60-02.1-28 through 60-02.1-38, may be paid from the trust fund.

SECTION 3. AMENDMENT. Section 60-03-01 of the North Dakota Century Code is amended and reenacted as follows:

60-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Claimant" means any person claiming to be injured by the default of the licensee in the payment for any ~~gain~~ ~~or~~ hay purchased or marketed by the licensee.

2. "Commission" means the public service commission.
3. "Credit-sale contract" means a written contract for the sale of ~~grain or~~ hay under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the ~~grain or~~ hay for sale and which contains the notice required in subdivision g of subsection 5 of section 60-03-04.1. Where a part of the sale price of a contract for the sale of ~~grain or~~ hay is to be paid or may be paid more than thirty days after the delivery or release of the ~~grain or~~ hay for sale, only that part of the contract is a credit-sale contract.
4. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed.
5. "Licensee" means ~~a roving grain or hay buyer licensed under this chapter.~~
6. "~~Roving grain or hay~~ 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. The term does not include:
 - a. ~~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 or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - 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.~~
6. "Licensee" means a hay buyer licensed under this chapter.

SECTION 4. AMENDMENT. Section 60-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

60-03-01.1. Duties and powers of the commission. The commission shall have the power to:

1. Exercise general supervision of the ~~roving grain or~~ hay buyers of this state.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect during ordinary business hours, any books, documents, and records of any ~~roving grain or~~ hay buyer.
4. Make all proper rules for carrying out and enforcing any law in this state regarding ~~roving grain or~~ hay buyers.

SECTION 5. AMENDMENT. Section 60-03-02 of the North Dakota Century Code is amended and reenacted as follows:

60-03-02. License - How obtained - Fee. Each ~~roving grain or~~ hay buyer operating within this state must obtain a license through the commission to expire on July thirty-first of each year. Each license must designate the business address of the licensee, and each licensee shall have and maintain an agent for process within this state. The license fee which must accompany the application for license is ~~seventy-five~~ one hundred dollars.

SECTION 6. AMENDMENT. Section 60-03-04 of the North Dakota Century Code is amended and reenacted as follows:

60-03-04. Bond filing by ~~roving grain or~~ hay buyer. Before a license is issued to any ~~roving grain or~~ hay buyer, the applicant shall file with the commission a bond in an amount set by the commission; ~~but not less than one hundred thousand dollars; except when the licensee pays cash for ninety percent of all grain or hay at the time of delivery and the remaining ten percent within twenty-four hours of the time of delivery to the licensee in which case the bond amount may not be less than fifty thousand dollars.~~ The bond shall:

1. Cover the period of the license.
2. Run to the state of North Dakota for the use and benefit of all persons selling ~~grain or~~ hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a ~~roving grain or~~ hay buyer, and be for the specific purpose of protecting persons dealing with the licensee or its agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not accrue to the benefit of any person entering into a credit-sale contract with the licensee.
5. Be governed by all of the provisions of law and rules applicable to the business of a ~~roving grain or~~ hay buyer.

The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on each bond must be a corporate surety company, approved by the commission, and authorized to do business in the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, the cash, negotiable instrument, or personal surety bond will properly protect persons dealing with the licensee or its agent within the state.

SECTION 7. AMENDMENT. Section 60-03-04.1 of the North Dakota Century Code is amended and reenacted as follows:

60-03-04.1. Credit-sale contract. A ~~roving grain or~~ hay buyer may not purchase or market ~~grain or~~ hay by a credit-sale contract unless all of the following are complied with:

1. The ~~roving grain or~~ hay buyer shall file with the commission a bond in addition to that required by section 60-03-04 and in an amount set by the commission, but not less than one hundred thousand dollars. The

bond must cover the period of the license and run to the state of North Dakota for the use and benefit of all persons selling ~~grain or~~ hay to or through the licensee by credit-sale contract. The commission shall set the amount of the bond at a level it deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, the cash, negotiable instrument, or personal surety bond will properly protect persons selling ~~grain or~~ hay to or through the licensee by credit-sale contracts.

2. The licensee shall file with the commission a current financial statement setting forth the licensee's financial position and results in operations for the licensee's most recent fiscal period. The financial statement must conform to generally accepted accounting principles.
3. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing. A copy of the printed form used for the credit-sale contract must be filed with and approved by the commission at the beginning of each license period. A series of consecutively numbered approved contracts shall not be used in any other state.
4. The licensee shall maintain an accurate record of the disposition of each credit-sale contract form.
5. Each credit-sale contract must contain or provide for all of the following:
 - a. The seller's name and address.
 - b. The terms and conditions of delivery.
 - c. The amount and kind of ~~grain or~~ hay delivered.
 - d. The price per unit or basis of value.
 - e. The date payment is to be made which must not exceed one hundred twenty days from the date the ~~grain or~~ hay is delivered.
 - f. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.
 - g. Notice in a clear and prominent manner that the sale is by credit-sale contract which is not protected by the bond coverage provided for in section 60-03-04 and that an additional bond covering credit-sale contracts is required by section 60-03-04.1.
6. The contract must be executed in duplicate by both parties. One copy must be retained by the licensee and one copy must be delivered to the seller.
7. Upon revocation, termination, or cancellation of a license, the payment date for all credit-sale contracts must, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all

unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract.

SECTION 8. AMENDMENT. Section 60-03-05 of the North Dakota Century Code is amended and reenacted as follows:

60-03-05. ~~Roving grain or hay~~ Hay buyer must carry license - Penalty for transacting business without license and giving a bond. The licensee shall have the license in the licensee's possession at all times while the licensee is engaged in the business of a ~~roving grain or hay~~ buyer and must exhibit the ~~said~~ license to each ~~and every~~ person from whom the licensee purchases ~~grain thereunder~~ hay under the license. Any ~~roving grain or hay~~ buyer who shall transact business without first procuring a license and giving a bond as herein provided shall be guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 60-03-08 of the North Dakota Century Code is amended and reenacted as follows:

60-03-08. Revocation and suspension. The commission may revoke or suspend the license of any ~~roving grain or hay~~ buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a ~~roving grain or hay~~ buyer shall automatically be suspended for failure at any time to have or to maintain a bond in the amount and type required.

SECTION 10. AMENDMENT. Section 60-03-10 of the North Dakota Century Code is amended and reenacted as follows:

60-03-10. Records required to be kept by ~~roving grain or hay~~ buyer - Reports. Each ~~roving grain or hay~~ buyer shall keep such accounts, records, and memoranda concerning the person's dealings as such buyer as from time to time may be required by the commission and shall make such reports of purchases of ~~grain or hay~~ as may be required by the rules made by the commission. The commission at all times shall have access to such accounts, records, and memoranda.

SECTION 11. AMENDMENT. Section 60-03-11 of the North Dakota Century Code is amended and reenacted as follows:

60-03-11. ~~Roving grain or hay~~ Hay buyer's fee - Paid into state treasury. All fees collected by the commission under the provisions of this chapter shall be paid into the state treasury monthly.

SECTION 12. AMENDMENT. Section 60-03-12 of the North Dakota Century Code is amended and reenacted as follows:

60-03-12. Insolvency of ~~roving grain or hay~~ buyer. A licensee is insolvent when the licensee defaults in payment for ~~grain or hay~~ purchased or marketed by the licensee.

SECTION 13. AMENDMENT. Section 60-03-14 of the North Dakota Century Code is amended and reenacted as follows:

60-03-14. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. ~~Grain Hay~~ of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored ~~grain hay~~.
2. The proceeds of insurance policies on ~~grain hay~~ destroyed in storage.
3. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
4. Unencumbered accounts receivable for hay sold at the time or following the filing of a claim that precipitates an insolvency.

SECTION 14. AMENDMENT. Section 60-03-17 of the North Dakota Century Code is amended and reenacted as follows:

60-03-17. Remedy of claimants. No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting ~~grain hay~~, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Sections 60-03-12 through 60-03-22 do not prohibit any claimant, either individually or in conjunction with other claimants, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 15. AMENDMENT. Section 60-03-18 of the North Dakota Century Code is amended and reenacted as follows:

60-03-18. Commission to marshal trust assets. Upon its appointment the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all claimants against the licensee's bonds, insurers of ~~grain hay~~, any person who may have converted any ~~grain hay~~, and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 16. REPEAL. Section 60-03-03 of the North Dakota Century Code is repealed.

Approved April 14, 1999

Filed April 14, 1999

WATERS

CHAPTER 535

SENATE BILL NO. 2188

(Senator Traynor)
(Representatives Brekke, Grosz, D. Johnson)

STATEWIDE WATER DEVELOPMENT AND BONDS

AN ACT to create and enact a new section to chapter 61-01 and chapter 61-02.1 of the North Dakota Century Code, relating to statewide water development goals and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program; to amend and reenact subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code, relating to the definition of works; to require the pledging of funds for certain water projects; to allocate funds from settlements with tobacco product manufacturers; to provide a statement of legislative intent; to provide for reports to the legislative council; to provide for development of a statewide water development program; to provide an appropriation; 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 61-01 of the North Dakota Century Code is created and enacted as follows:

Statewide water development goals. The legislative assembly will support to the extent funds are available from the water development trust fund the comprehensive statewide water development program developed pursuant to section 2 of chapter 587 of the 1995 Session Laws and to the state water management plan established under section 61-01-26. In order to implement the state water management plan, the legislative assembly will support the following:

1. During the 1999-2001 biennium:
 - a. Southwest pipeline project: Six million dollars in state funds and eleven million five hundred thousand dollars in federal funds, assuming Perkins County water system payment to the state water commission of four million five hundred thousand dollars.
 - b. Northwest area water supply project: Eight million two hundred thousand dollars in local funds and fourteen million eight hundred thousand dollars in federal funds, with an option being considered of the state water commission bonding the local cost-share with local repayment of the total principal, interest, and cost of issuance of the bonds to the state water commission.

- c. Other municipal, rural, and industrial projects: Twenty-five million five hundred thousand dollars in local funds and thirty-nine million nine hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Twenty-five million dollars in local funds, twenty-five million dollars in state funds, and thirty-eight million five hundred thousand dollars in federal funds. The state total cost-share of fifty-two million dollars or so much of the total cost-share that is required may be bonded, requiring a loan repayment estimated at three million nine hundred thousand dollars per year with repayment beginning in 2001.
 - e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission and the federal government must have agreed to participate in construction of the outlet.
2. During the 2001-03 biennium:
- a. Water to eastern North Dakota: Seventeen million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: Five hundred thousand dollars in local funds, one million seven hundred thousand dollars in state funds, and twelve million five hundred thousand dollars federal funds.
 - c. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Thirty-five million seven hundred thousand dollars in local funds, twenty-seven million dollars in state funds, and sixty-two million nine hundred thousand dollars in federal funds; annual bond payments of three million nine hundred thousand dollars. Components of the Grand Forks flood control project involve water treatment plant improvements. Those federal costs are reflected in subdivision d because of potential cost-sharing using Garrison diversion municipal, rural, and industrial funds. Other projects, such as greenway, are listed under subdivision g.

- f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Thirty-one million seven hundred thousand dollars in local funds, twenty-five million nine hundred thousand dollars in state funds, and thirty-nine million eight hundred thousand dollars in federal funds.
- 3. During the 2003-05 biennium:
 - a. Water to eastern North Dakota: Six million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, five million dollars in state funds, and eleven million four hundred thousand dollars in federal funds.
 - c. Northwest area water supply project: Eleven million eight hundred thousand dollars in local funds and twenty-one million eight hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
- 4. During the 2005-07 biennium:
 - a. Water to eastern North Dakota: Eighty-four million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Southwest pipeline project: One million dollars in local funds, nine million five hundred thousand dollars in state funds, and nineteen million five hundred thousand dollars in federal funds.

- c. Northwest area water supply project: Five million eight hundred thousand dollars in local funds and ten million nine hundred thousand dollars in federal funds.
 - d. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - e. Grand Forks flood control: Annual bond payments of three million nine hundred thousand dollars.
 - f. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - g. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
5. During the 2007-09 biennium:
- a. Water to eastern North Dakota: Fifty-nine million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.
 - b. Northwest area water supply project: Three million seven hundred thousand dollars in local funds and seven million dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
6. During the 2009-11 biennium:
- a. Water to eastern North Dakota: Two million dollars in federal funds appropriated under the Garrison Diversion Unit Reformulation Act of 1986 [Pub. L. 99-294; 100 Stat. 418], Dakota Water Resources Act of 1998, or other federal Act. The local cost has not been determined and will be determined after project configuration is complete.

- b. Northwest area water supply project: One million seven hundred thousand dollars in local funds and three million three hundred thousand dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: Seventeen million seven hundred thousand dollars in local funds and thirty-two million eight hundred thousand dollars in federal funds.
 - d. Grand Forks flood control: Annual bond repayments of three million nine hundred thousand dollars.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: Bond repayments of one million five hundred thousand dollars per year.
 - f. General projects: Twenty-four million dollars in local funds, eighteen million four hundred thousand dollars in state funds, and five million five hundred thousand dollars in federal funds.
7. Beyond the year 2011:
- a. Water to eastern North Dakota: The local cost has not been determined and will be determined after project configuration is complete.
 - b. Northwest area water supply project: Eight million seven hundred thousand dollars in local funds and sixteen million three hundred thousand dollars in federal funds.
 - c. Other municipal, rural, and industrial projects: One hundred thirty million two hundred thousand dollars in local funds and two hundred forty-one million two hundred thousand dollars in state funds. The anticipated three hundred forty-five million dollars in federal cost-share has been used in the previous bienniums and the remaining cost-share for projects has been identified as a potential state cost-share.
 - d. Grand Forks flood control: A total of fifty-eight million five hundred thousand dollars in bond repayments is anticipated.
 - e. Devils Lake outlet to Sheyenne River and to west Stump Lake: A total of fifteen million dollars in bond repayments.
 - f. General projects: Two hundred twenty million two hundred thousand dollars in local funds, one hundred fifty-six million four hundred thousand dollars in state funds, and thirty-four million three hundred thousand dollars in federal funds.

SECTION 2. AMENDMENT. Subdivision d of subsection 5 of section 61-02-02 of the North Dakota Century Code is amended and reenacted as follows:

- d. All works for the conservation, control, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, flood control, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection,

and the draining of lands injured or in danger of injury as a result of such water utilization.

SECTION 3. Chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

61-02.1-01. Legislative findings and intent - Authority to issue bonds.

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; and that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds that continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state and that continued construction of the southwest pipeline project involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. The legislative assembly also finds that current funding for the southwest pipeline project has become uncertain, and therefore, it is declared necessary and in the public interest that the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds that the Devils Lake basin is suffering and facing a worsening flood disaster; and that construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. Therefore, it is declared necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for flood control projects authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe

damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may issue bonds for a flood control or reduction project only:

a. When:

- (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
- (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
- (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
- (5) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (6) A project cooperation agreement, which contains provisions acceptable to the state engineer and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state;
- (8) That no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the flood control or reduction project; and
- (9) That the flood control or reduction project is designed to be cost-effective and that any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the state engineer and approved by the governor;

b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United

States army corps of engineers and the federal emergency management agency; or

- c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.
6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02 and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.
7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:

 - a. (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet;
 - (2) The state water commission or the project sponsor must sign a project cooperation agreement with the United States army corps of engineers;
 - (3) The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and
 - (4) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.

- b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 or subdivision a of subsection 7 for a project unless federal funds have been appropriated for that project.
10. Notwithstanding this section, if bonds are issued under this chapter, any bonds subsequently issued after the first issuance must meet the same conditions as the bonds initially issued.
11. Notwithstanding this section, except for a project listed in subdivision a of subsection 7 the state water commission may not issue bonds under this chapter unless the local project sponsor has agreed to repay the local project sponsor's share of any bonds issued for the entire nonfederal share of the cost of a project.

61-02.1-02. Bond issuance amount limited.

1. The state water commission bonds issued for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01 may not exceed forty-five percent and bonds issued for flood control or reduction projects meeting the requirements of subdivision b or c of subsection 5 of section 61-02.1-01 may not exceed one-half of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the flood control or reduction project or, in the aggregate, sixty million three hundred thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, whichever is less. Of the sixty million three hundred thousand dollars authorized in this subsection for flood control or reduction projects under subsection 5 of section 61-02.1-01, fifty-two million dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision a of subsection 5 of section 61-02.1-01, three million five hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision b of subsection 5 of section 61-02.1-01, and four million eight hundred thousand dollars must be allocated for flood control or reduction projects meeting the requirements of subdivision c of subsection 5 of section 61-02.1-01.
2. The state water commission bonds issued as provided in subsection 6 of section 61-02.1-01 for continued construction of the southwest pipeline project may not exceed, in the aggregate, four million five hundred

thousand dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves.

3. The state water commission bonds issued as provided in subsection 7 of section 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake or other projects listed in subdivision b of subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The state water commission may use all or part of the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01 and the proceeds are appropriated to match, in a ratio no greater than required by the federal government, any federal funds available for the projects identified in subsection 7 of section 61-02.1-01 and to repay the line of credit extended to the state water commission under section 4 of this Act. The commission may require any political subdivision affected by Devils Lake flooding to participate in the cost of construction of an outlet from Devils Lake to the Sheyenne River and to west Stump Lake by providing matching funds in a percentage of the construction costs determined by the commission to be reasonable in light of the benefits to be received by that political subdivision in relation to benefits received by all benefited political subdivisions. Any local matching fund requirement must be determined by the commission and the affected political subdivisions must be informed of their matching fund obligation prior to issuance of bonds pursuant to this chapter.
4. For any project that requires federal participation, the state water commission may issue bonds equal to the estimated project costs less any local participation. Except for a project listed in subdivision a of subsection 7 of section 61-02.1-01, if the state water commission issues bonds for both the state and local cost-share, an agreement for the local repayment of the local cost-share must be a part of an agreement between the state water commission and the local project sponsor to issue bonds for the nonfederal share.

61-02.1-03. Limitation of action. An action may not be brought or maintained in any court in this state questioning the validity of any bonds issued as provided in this chapter unless the action is commenced within thirty days after the adoption of the resolution of the state water commission authorizing the sale of the bonds. The state water commission may commence a special proceeding any time after the effective date of this chapter in and by which the constitutionality and validity of the bonds to be issued pursuant to this chapter may be judicially examined, approved and confirmed, or disapproved and disaffirmed. Proceedings must comply as nearly as possible with the procedure required for declaratory judgment proceedings.

61-02.1-04. Bonds payable from appropriations and other revenues.

1. Principal and interest on bonds issued for flood control or reduction projects as provided in this chapter are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission

makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of flood control or reduction projects to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

2. Principal and interest on bonds issued for continued construction of the southwest pipeline project are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, or from payment from the Perkins County rural water system, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of the southwest pipeline project to pay bonds issued for the project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.
3. Principal and interest on bonds issued under subsection 7 of section 61-02.1-01 are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose, including any federal moneys received by the state for the construction of an outlet to Devils Lake to pay bonds issued for that project, or financing a statewide water development program to pay bonds issued for that project. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

4. Obligations issued as provided in this chapter do not constitute a debt, liability, or obligation of the state of North Dakota or a pledge of the faith and credit of the state of North Dakota, but are payable solely from the sources as described in this chapter.
5. The state water commission shall include in its submission to the governor for inclusion by the governor in the biennial executive budget of the state for each year of the respective biennium during the term of any bonds issued as provided in this chapter an amount fully sufficient to pay the principal and interest required to be paid in each year of the biennium, if any, from moneys from nongeneral fund sources. Provided, that should the governor not include in the executive budget for any reason the amounts required to be included by this section, the state water commission shall request independently that the legislative assembly amend the executive budget appropriation so as to include the amounts.

61-02.1-05. Water development trust fund. Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided in this chapter and for other water projects as provided in 1999 House Bill No. 1475.

SECTION 4. LINE OF CREDIT - APPROPRIATION. The Bank of North Dakota shall extend a line of credit not to exceed \$84,800,000, which is hereby appropriated for the biennium beginning July 1, 1999, and ending June 30, 2001, to the state water commission for the purpose of interim financing until bonds are issued under chapter 61-02.1. Advances on the line of credit may be made only when a source of repayment has been identified and determined to be available.

SECTION 5. CORPORATE CENTER - CONTRACT TO PLEDGE REVENUES. Before the issuance of any bonds for any flood control or reduction project in Grand Forks as provided in chapter 61-02.1, the state water commission shall require a contract be entered with the city of Grand Forks pledging revenue from the corporate center in that city as follows:

1. After all moneys pledged for the repayment of revenue bonds for the corporate center project have been paid, the city must pledge revenue from the project to the water development trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. This contract must be in compliance with all applicable federal requirements.
2. If the corporate center is voluntarily sold, the city must pledge the proceeds of the sale, subject to the rights of bondholders and all applicable federal requirements, to the water development trust fund as repayment for the flood control or reduction project to facilitate economic development in this state. The corporate center may not be voluntarily sold without the prior approval of the budget section of the legislative council.
3. The revenue to be pledged must be in amounts similar to the amounts previously dedicated each year for the repayment of the revenue bonds.

4. The period during which revenue must be pledged under this section is from the date of the final payment of the revenue bonds until the end of the projected life of the corporate center, which must be not less than forty years from the date of initial occupancy.
5. Any refinancing of debt or any improvements to the corporate center requiring the incurring of indebtedness cannot be entered without prior approval of the budget section of the legislative council.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the fifty-sixth legislative assembly that a total of six million dollars of funding be provided to the state water commission for the southwest pipeline project through a combination of funding sources. The potential funding source must include payment from the Perkins County rural water system, bonds issued by the state water commission, or other available resources.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the water development trust fund, not otherwise appropriated or from bond proceeds, the sum of \$84,800,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of repaying the line of credit extended to the state water commission under section 4 of this Act, for the biennium beginning July 1, 1999, and ending June 30, 2001. It is the intent of the legislative assembly that the funds appropriated in this section are from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05.

SECTION 8. EFFECTIVE DATE. The authority of the commission to issue bonds as provided in subsection 2 of section 61-02.1-01 becomes effective on the date the state engineer certifies to the state water commission that the Perkins County water system will not make a payment to the state water commission in the amount of four million five hundred thousand dollars or January 1, 2000, whichever occurs earlier.

SECTION 9. REPORTS TO LEGISLATIVE COUNCIL AND STANDING COMMITTEES - COMPREHENSIVE STATEWIDE WATER DEVELOPMENT PROGRAM AND STATE WATER MANAGEMENT PLAN IMPLEMENTATION - BOND ISSUANCE. The state engineer shall report periodically to the budget section, any other interim committee designated by the legislative council, and to the house of representatives and the senate standing committees on natural resources and appropriations regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance of bonds to finance construction of flood control projects, the southwest pipeline project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim. The report must include information on the funding sources used to repay any bonds issued under chapter 61-02.1.

SECTION 10. STATEWIDE WATER DEVELOPMENT PROGRAM - LEGISLATIVE INTENT. The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this Act are completed.

SECTION 11. EXPIRATION DATE. The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective provided, however, that the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 536

HOUSE BILL NO. 1281

(Representatives Berg, Nicholas)
(Senators Kelsh, Klein, Wanzek)

WATER COMMISSION BONDS AND IRRIGATION FINANCE PROGRAM

AN ACT to create and enact sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, 61-02-68.19, and a new chapter to title 61 of the North Dakota Century Code, relating to state water commission bonding authority, guarantees of evidences of indebtedness, and creation of an irrigation district finance program; and to amend and reenact sections 61-02-68.1 and 61-02-68.12 of the North Dakota Century Code, relating to guarantees of evidences of indebtedness by the state water commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-68.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from proceeds - Issuance of notes. The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes (the terms "interim notes" or "notes" ~~may~~, unless the context ~~demands~~ otherwise requires, may be used in sections 61-02-68.1 through ~~61-02-68.13~~ 61-02-68.19 in lieu of the term "interim financing notes") in evidence thereof in order to provide owners with ~~tax-exempt~~ construction period financing. ~~Such~~ The construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

SECTION 2. AMENDMENT. Section 61-02-68.12 of the North Dakota Century Code is amended and reenacted as follows:

61-02-68.12. Interim financing notes or guarantees not a state obligation - Payment restricted to revenues - Notes or guarantees not a lien. Interim financing notes issued by the commission under this chapter ~~shall~~ or guarantees provided under sections 61-02-68.14, 61-02-68.15, 61-02-68.16, 61-02-68.17, 61-02-68.18, or 61-02-68.19 are not be in any way a debt or liability of this state and ~~shall do~~ not constitute a loan of the credit of this state or create any debt or debts, liability or liabilities on behalf of this state, or be or constitute a pledge of the faith and credit of this state, but all ~~such~~ notes ~~shall be~~ or guarantees are payable solely from funds pledged or available for their payment as authorized in this chapter. ~~Such~~ The notes ~~shall~~ or guarantees do not constitute a charge, lien, nor encumbrance, legal or equitable, upon any property of the commission, other than funds received pursuant to an interim financing agreement.

Each note issued under this chapter ~~shall~~ must recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, or North Dakota, and

that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 3. Section 61-02-68.14 of the North Dakota Century Code is created and enacted as follows:

61-02-68.14. Guarantee issued by commission. The commission may guarantee evidences of indebtedness issued or other obligations undertaken by the owners of water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418], or evidences of indebtedness issued or other obligations undertaken by a not-for-profit organization establishing a financing program for the owners of the water projects eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] for the purpose of providing the owners with construction period financing. Construction period financing may include the cost of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance. A commission guarantee of indebtedness or other obligations of an owner of a water project must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

SECTION 4. Section 61-02-68.15 of the North Dakota Century Code is created and enacted as follows:

61-02-68.15. Pledges. The commission may pledge the municipal, rural, and industrial water supply funds authorized by Pub. L. 99-294 [100 Stat. 418] as security for a guarantee or note. A pledge is valid and binding whenever the pledge is made. The revenues or other moneys pledged and thereafter received by the commission are immediately subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind against the commission, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the commission.

SECTION 5. Section 61-02-68.16 of the North Dakota Century Code is created and enacted as follows:

61-02-68.16. Reserve fund.

1. The commission shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the legislative assembly for the purpose of the fund, all proceeds of notes issued or guaranteed by the commission required to be deposited in the fund by terms of a contract or a resolution of the commission with respect to the proceeds of notes, any moneys or funds of the commission that it determines to deposit in the fund, any moneys made available to the commission for the purposes of the fund from any other source, and any contractual right to the receipt of moneys by the commission for the purpose of the fund, including a letter of credit or similar instrument. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of notes and sinking fund payments as they become due and payable and for the retirement of notes, including payment of any redemption premium required to be paid when any notes are redeemed or retired before maturity, and for the payment of principal and interest on evidences of indebtedness or obligations guaranteed by the commission. Moneys in the reserve fund

may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of the interest due and payable on notes and the principal of notes maturing and payable and sinking fund payments and for the retirement of notes in accordance with the terms of a contract between the commission and its noteholders, for the payment of principal and interest on evidences of indebtedness or obligations of an owner of water projects for which a guarantee has been issued by the commission, and for payment of interest or principal or sinking fund payments or retirement of notes or draws upon a guarantee, for which other moneys of the commission are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the commission unless the commission has determined that notes of the commission cannot be issued under acceptable terms for the payment of the guarantee or that the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the commission and its noteholders to be raised in the current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding notes and the payment required by the terms of any contract to a sinking fund established for the payment or redemption of the notes.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the notes to be taxable under the Internal Revenue Code, then at the discretion of the commission a reserve fund does not need be established before the issuance of notes or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.
3. Notes may not be issued by the commission unless there is in the reserve fund the required debt service reserve for all notes then issued and outstanding and the notes to be issued. This chapter does not prevent or preclude the commission from satisfying this requirement by depositing so much of the proceeds of the notes to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The commission may issue its notes for the purpose of providing an amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet any higher or additional reserve as may be fixed by the commission with respect to the fund.
4. In order to assure the maintenance of the required debt service reserve, there must be appropriated by the legislative assembly and paid to the commission for deposit in the reserve fund any sum certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve or to maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the commission. The commission may approve a resolution for the issuance of notes, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for notes issued under that resolution.

5. If the maturity of a series of notes of the commission is not more than three years from the date of issuance of the notes, the commission may determine that no reserve fund need be established for that respective series of notes or that the reserve fund may be in an amount less than the required debt service reserve. If the determination is made, holders of that respective series of notes do not have an interest in or claim on existing reserve funds established for the security of the holders of previously issued commission notes, and do not have an interest in or claim on reserve funds established for the holders of subsequent issues of notes of the commission.

SECTION 6. Section 61-02-68.17 of the North Dakota Century Code is created and enacted as follows:

61-02-68.17. Additional reserves and funds. The commission may establish additional and further reserves or other funds or accounts as may be necessary, desirable, or convenient to further the accomplishment of the purposes of the commission to comply with the provisions of an agreement made by or a resolution of the commission.

SECTION 7. Section 61-02-68.18 of the North Dakota Century Code is created and enacted as follows:

61-02-68.18. Protection of service during term of guarantee or loan.

1. The service provided or made available by owners of water projects through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the owners of water projects from the commission or any other state entity, may not be curtailed or limited by inclusion of all or any part of the area served by the owners of water projects within the boundaries of any other owners of water projects, or by the granting of any private franchise for similar service within the area served by the owners of water projects, during the term of the guarantee or loan. The owners of water projects providing the service may not be required to obtain or secure a franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another owner of a water project during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two owners of water projects and the commission or other state entity from negotiating an agreement for the right or obligation to provide the service in question, provided that an agreement is invalid unless the commission or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding notes of the commission issued to fund the loan.

SECTION 8. Section 61-02-68.19 of the North Dakota Century Code is created and enacted as follows:

61-02-68.19. Interim financing notes, guarantees, or bonds for municipal, rural, and industrial water supply projects - Public interest. Guarantees made under section 61-02-68.14 or bonds or interim notes issued under chapter 61-02 for the purpose of providing construction period financing for owners of water projects

eligible to receive municipal, rural, and industrial water supply funds pursuant to Pub. L. 99-294 [100 Stat. 418] are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

SECTION 9. A new chapter to title 61 of the North Dakota Century Code is created and enacted as follows:

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

1. "Bond" means an evidence of indebtedness of the program issued by the commission.
2. "Bondholder" or any similar term, when used with reference to a bond of the program, means any person who is the bearer of any outstanding bond of the program.
3. "Commission" means the state water commission.
4. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a counsel whose opinions are generally accepted by the purchasers of municipal securities.
5. "Municipal security" means an evidence of indebtedness issued by an irrigation district.
6. "Program" means the North Dakota irrigation district finance program established by the commission under this chapter.
7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the program reserve fund or funds.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal of or interest on municipal securities, investment income, revenues, appropriations, liquidation of security, and all other income derived or to be derived by the commission under the program.

Creation of program. The North Dakota irrigation district finance program is established under the operation, management, and control of the commission. The program is constituted as an instrumentality of the state exercising public and governmental functions.

Participation voluntary - Agreement to participate. Participation in the program by an irrigation district is voluntary and no irrigation district may be required to sell its municipal security issues to the program. Notwithstanding any other law, an irrigation district that wishes to participate in the program may enter into an agreement with the program for the purchase by the program of a municipal security issue of the irrigation district, including the purchase by the program of an issue of refunding municipal securities, which may be required by agreement with the program to be issued at a rate of interest higher or lower than that of the municipal security issue to be refunded.

Guarantee, lending, and borrowing powers. The program may guarantee municipal securities issued by an irrigation district. The program may lend money

to irrigation districts through the purchase and holding of municipal securities which are eligible for purchase by the program, under this chapter, according to the terms of a guarantee by the program for the payment of debt service on a municipal security of an irrigation district. However, the program may lend money to irrigation districts through the purchase and holding of municipal securities issued by the irrigation district, without regard to the initial issuance of a guarantee of the principal amount and interest payable on the municipal securities issued, if the commission approves a resolution that authorizes the program to purchase and hold those municipal securities. The authorizing resolution must state that the commission has determined that private bond markets will not be responsive to the needs of the issuing irrigation district concerning the municipal securities or that the municipal securities cannot be sold through private bond markets without the guarantee of the program. The program may hold municipal securities acquired under this chapter for any length of time necessary. The program, for the purposes authorized by this chapter, may issue its bonds payable solely from the revenues available to the program which are authorized or pledged for payment of program bonds and obligations, and assist irrigation districts as provided in this chapter. Bonds or guarantees of the program issued under this chapter are not a debt or liability of the state and do not constitute a loan of the credit of the state, create any debt or liability on behalf of the state, or constitute a pledge of the faith and credit of the state. The bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the program is obligated to pay the principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on the bonds. Specific funds pledged to fulfill the program's obligations are obligations of the program. All expenses incurred in carrying out this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the program to incur any indebtedness or liability on behalf of or payable by the state. Guarantees or bonds issued under this chapter are in the public interest and are not subject to the limitation contained in subsection 2 of section 61-02-46.

How bonds or guarantees may be secured. A bond or guarantee issued by the program may be secured by works or lands and the income derived from those works or lands.

Powers. The program has the following powers:

1. To sue and be sued.
2. To make and enforce bylaws and rules for the conduct of its affairs and business and for use of its services.
3. To acquire, hold, use, and dispose of its income, revenue, funds, and moneys in accordance with law.
4. To acquire, rent, lease, hold, use, and dispose of other personal property for its purposes.
5. To borrow money and to issue its negotiable bonds or notes and to provide for and secure their payment and to provide for the rights of the holders, and to purchase, hold, and dispose of any of its bonds and obligations.

6. To fix, revise, charge, and collect fees and charges for the use of its services or facilities.
7. To perform any acts and do all things authorized by this chapter, through its officers, agents, or employees, or by contracts with any person.
8. To make and enforce all contracts necessary or desirable for the program or pertaining to any loan to a political subdivision or any purchase or sale of municipal securities or other investments or to the performance of its duties and execution of its powers under this chapter.
9. To purchase or hold municipal securities of irrigation districts at the prices and in the manner deemed advisable by the program and to sell municipal securities acquired or held by it in the manner deemed advisable by the program.
10. To invest any funds or moneys of the program not then required for loans to irrigation districts and for the purchase of municipal securities in the same manner as permitted for the investment of funds belonging to the state or the Bank of North Dakota.
11. To fix and prescribe any form of application or procedure to be required of an irrigation district for the purpose of any guarantee, loan, or the purchase of its municipal securities, and to fix the terms and conditions of any guarantee, loan, or purchase and to enter into agreement with irrigation districts with respect to any such guarantee, loan, or purchase.
12. To consider the need, desirability, or eligibility of a guarantee or loan, the ability of an irrigation district to secure borrowed money from other sources, and the costs of that borrowing without program involvement.
13. To impose and collect charges from an irrigation district for its costs and services in review or consideration of any proposed guarantee or loan to an irrigation district or purchase of municipal securities of an irrigation district, and to impose and collect charges whether or not a guarantee or loan has been made or municipal securities have been guaranteed or purchased.
14. To fix and establish any and all terms and provisions with respect to any guarantee or purchase of municipal securities by the program, including dates and maturities of bonds, provisions as to redemption or payment prior to maturity, and any and all other matters necessary or advisable in the judgment of the program.
15. To procure insurance against any losses in connection with its property, operations, or assets in the amounts and from the insurers as necessary to pay the premiums on the insurance.
16. To the extent permitted under its contracts with the holders of bonds of the program, to consent to any modification with respect to rates of interest, time, and payment of any installment of principal or interest, security, or any other term of bond, contract, or agreement of any kind to which the program is a party.

17. To do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this chapter.

Guarantee of the program. A guarantee by the program of municipal securities of an irrigation district must be authorized by resolution of the commission and must be evidenced by a written agreement approved by the commission.

Bonds of the program. Bonds of the program must be authorized by resolution of the commission and may be issued in the form, with dates, interest rates, denominations, rights of conversion, registration, priority of payment, manner, location, and form of payment, terms of redemption, at public or private sale, and at the time and price determined by the commission to be in the best interest of the program.

Pledges. Any pledge of revenue made by the commission as security for a program guarantee or program bonds is valid and binding from the time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the program are immediately subject to the lien of the pledge, without any physical delivery or further act, and the lien of any pledge is valid and binding against all parties having claims of any kind against the program, regardless of whether the parties have notice. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded, except in the records of the program.

Reserve fund.

1. The program shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited by terms of any contract between the program and its bondholders or any resolution of the program with respect to the proceeds of bonds, any other moneys or funds of the program which are deposited by the program, any contractual right to the receipt of moneys by the program for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the program only for the purposes of the fund from any other source. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as they become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity, and for the payment of principal and interest on municipal securities guaranteed by the program. Moneys in the reserve fund may not be withdrawn if the withdrawal would reduce the amount in the reserve fund to less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, sinking fund payments, the retirement of bonds in accordance with the terms of any contract between the program and its bondholders, the payment of principal and interest on municipal securities of an irrigation district for which a guarantee has been issued by the program, and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds or execution of a guarantee, other moneys of the program are not then available in accordance with the terms of the contract. The reserve fund may not be used for the payment of a guarantee by the program unless the commission has determined that bonds of the program cannot be issued under acceptable terms for the

payment of the guarantee, or the payment of the guarantee will not reduce the reserve fund to an amount less than the required debt service reserve. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the program and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any contracts to sinking funds established for the payment or redemption of the bonds.

2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because not restricting the yield may cause the bonds to be taxable under the Internal Revenue Code, then, at the discretion of the program, no reserve fund need be established prior to the issuance of bonds, the reserve fund need not be funded to the levels required by this section, or an existing reserve fund may be reduced.
3. No bonds may be issued by the program unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and for the bonds to be issued. Nothing in this chapter prevents the program from satisfying this requirement by depositing upon issuance so much of the proceeds of the bonds to be issued, as is needed to achieve the required debt service reserve. The program may, at any time, issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet higher or additional reserves as may be fixed by the program.
4. In order to ensure maintenance of the required debt service reserve, the legislative assembly shall appropriate and deposit in the reserve fund the amount certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve, or maintain a reserve fund established by the commission under this chapter and required according to the terms of a guarantee issued by the program. However, the commission may approve a resolution for the issuance of bonds, as provided by this chapter, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under the resolution.
5. If the maturity of a series of bonds of the program is three years or less from the date of issuance of the bonds, the program may determine that no reserve fund need be established for that respective series of bonds, or that it may be established in an amount less than the required debt service reserve. If such a determination is made, holders of the respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued program bonds and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the program.

Additional reserves and funds. The program may establish additional reserves, funds, or accounts as it deems necessary to further the program or to comply with any agreement made by, or any resolution of, the program.

Personal liability - Purchase of bonds - Bonds as legal investments - Security.

1. Neither a member of the commission nor any person executing bonds issued under this chapter is liable personally on any bonds by reason of the issuance of those bonds.
2. The program has the power to purchase bonds of the program out of any available funds or moneys of the program. The program may hold, cancel, or resell bonds or notes, subject to any agreements with holders of its bonds.
3. Notwithstanding any other law, the state and all public officers, boards, and agencies, and political subdivisions and agencies of the state, all national banking associations, state banks, trust companies, savings banks and institutions, savings and loan associations, investment companies, and other persons carrying on a banking business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds issued by the program pursuant to this chapter.
4. The bonds are authorized security for any and all public deposits.

Tax exemptions - Exemption of property from execution sale.

1. All property of the program and all bonds issued under this chapter are deemed to be serving essential public and governmental purposes and the property and the bonds issued, their transfer and their income, including any profits made on their sale, are exempt from all state, county, and municipal taxes.
2. All property of the program is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the property, nor may any judgment against the program be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the program on its revenues. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds by the program under this chapter or to obtain any relief upon the ground that a resolution is invalid must be commenced within ten days after the adoption of that resolution by the commission. After the expiration of that period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted, nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

Insurance or guaranty. The program is authorized and empowered to obtain from any department or agency of the United States or from nongovernmental insurer any insurance or guaranty, or from a financial institution a letter of credit to the extent the insurance, guaranty, or letter of credit available now or in the future for the payment or repayment of, interest or principal in whole or in part, on any bonds issued by the program, or on any municipal securities purchased or held by the program, or on any guarantee issued by the program, pursuant to this chapter; and to enter into any agreement or contract with respect to any insurance or guaranty, or letter of credit, and pay any required fee, unless doing so would impair

or interfere with the ability of the program to fulfill the terms of any agreement made with the holders of its bonds or guarantees.

Remedies on default of municipal securities. In the event of a default by an irrigation district in the payment of interest on or principal of any municipal securities owned or held by the program, the program may proceed to enforce payment, pursuant to law, of the interest or principal or other amount then due and payable.

Form of municipal securities and investments. All municipal securities held by the program as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the program. All municipal securities at any time purchased, held, or owned by the program must, upon delivery to the program, be in fully marketable form and accompanied by the documentation required from time to time by the program.

Presumption of validity. After issuance, all bonds of the program are conclusively presumed to be fully authorized and issued under the laws of this state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the program.

Protection of service during term of guarantee or loan.

1. The service provided or made available by an irrigation district through the construction or acquisition of an improvement, or the improvement revenues, financed in whole or in part with a guarantee or loan to the irrigation district from the program or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the irrigation district within the boundaries of any other irrigation district, or by the granting of any private franchise for similar service within the area served by the irrigation district during the term of the guarantee or loan. The irrigation district providing the service may not be required to obtain or secure any franchise, license, or permit, as a condition of continuing to serve the area if it is included within the boundaries of another irrigation district during the term of the guarantee or loan.
2. Under the circumstances described in subsection 1, nothing prevents the two irrigation districts and the program or other state agency or enterprise from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the program or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the program issued to fund the loan.

Program revenues - Source. The state water commission may use resource trust fund revenues appropriated to it by Senate Bill No. 2023, as approved by the fifty-sixth legislative assembly, for the purpose of funding the reserve funds or paying the obligations of the program.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 537

SENATE BILL NO. 2107

(Natural Resources Committee)
(At the request of the State Engineer)

WATER PERMIT APPLICATIONS

AN ACT to create and enact a new section to chapter 61-04 of the North Dakota Century Code, relating to water permit applications; and to amend and reenact subsection 4 of section 61-04-05 and section 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. Subsection 4 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

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 the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.
5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and ~~the time and place of a hearing on the application~~ by the date by which written comments regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state engineer will be mailed a copy of the state engineer's recommended decision on the application.
6. The applicant shall pay all costs of the publication of notice.

SECTION 2. A new section to chapter 61-04 of the North Dakota Century Code is created and enacted as follows:

Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. The state engineer shall consider all written comments received and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended

decision must be mailed to the applicant and any person who filed written comments.

3. Within thirty days of service of the recommended decision, the applicant and any person who filed written comments may file additional written comments with the state engineer or request a hearing on the application, or both. If a request for a hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearing is made, or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
4. If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.

SECTION 3. 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 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.

Subsection 1 of section 28-32-12.2 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, ~~the approval 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 [6167409.19 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 must be paid by the applicant.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 538

HOUSE BILL NO. 1040

(Legislative Council)
(Insurance and Health Care Committee)

HAIL SUPPRESSION

AN ACT to amend and reenact sections 61-04.1-03, 61-04.1-08, 61-04.1-09, 61-04.1-20, 61-04.1-21, 61-04.1-26, 61-04.1-38, and 61-04.1-39 of the North Dakota Century Code, relating to hail suppression pilot operations by the atmospheric resource board; and to repeal section 61-04.1-03.1 of the North Dakota Century Code, relating to the transition from the weather modification board to the atmospheric resource board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-03. Definitions. As used ~~herein~~ in this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Board" means the North Dakota atmospheric resource board which, in the exercise of the powers granted ~~herein~~ under this chapter, ~~shall have~~ has all of the powers of an administrative agency as defined in chapter 28-32.
2. "Controller" refers to any licensee duly authorized in this state to engage in weather modification ~~activities~~ operations.
3. "Geographical region" means a geographical area with a contiguous boundary that may enclose a portion of any county or counties.
4. ~~5.~~ 5. "Hail suppression" refers to the activation of any process ~~which~~ that will reduce, modify, suppress, eliminate, or soften hail formed in clouds or storms.
5. ~~6.~~ 6. "Increasing precipitation" refers to the activation of any process ~~which~~ that will actually result in greater amounts of moisture reaching the ground in any area from a cloud or cloud system than would have occurred naturally.
6. ~~7.~~ 7. "Initiating precipitation" refers to the process of causing precipitation from clouds ~~that~~ which could not otherwise have occurred naturally or inducing precipitation significantly earlier than would have occurred naturally.
6. ~~7.~~ 7. "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a limited geographical area or within a limited period of time.

7. ~~8.~~ 8. "Research and development" means exploration, field experimentation, and extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production of models, devices, equipment, materials, and processes.
8. ~~9.~~ 9. "Weather modification" means and extends to the control, alteration, and amelioration of weather elements including man-caused changes in the natural precipitation process, hail suppression or modification, and alteration of other weather phenomena including clouds, temperature, wind direction, and velocity, and the initiating, increasing, decreasing, and otherwise modifying by artificial methods of precipitation in the form of rain, snow, hail, mist, or fog through cloud seeding, electrification, or by other means to provide immediate practical benefits.
10. "Weather modification authority" means the governing body created by a board of county commissioners under section 61-04.1-22.1, 61-04.1-23, 61-04.1-27, 61-04.1-29, or 61-04.1-31.

SECTION 2. AMENDMENT. Section 61-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-08. Powers and duties of board. The board ~~may exercise~~ has the following powers and ~~shall have the following~~ duties:

1. The board shall appoint an executive director to serve at ~~its~~ the board's discretion; and to perform such duties ~~as~~ assigned by the board.
2. The board shall authorize the employment of ~~whatever~~ staff if the board deems necessary to carry out the provisions of this chapter. The executive director shall hire the staff, subject to the approval of the board.
3. The board shall adopt rules concerning qualifications, procedures, and conditions for issuance, revocation, suspension, and modification of licenses and permits; standards and instructions governing weather modification operations, including monitoring and evaluation; recordkeeping and reporting, and the board shall establish procedures and forms for ~~such~~ this recordkeeping and reporting. The board may adopt all other rules necessary to the administration of this chapter. The provisions of chapter 28-32 ~~shall~~ apply to this chapter; and rules of the board ~~shall~~ must be published in the North Dakota Administrative Code.
4. The board may contract with any person; ~~association, partnership, corporation, or limited liability company,~~ with the federal government, and with any county or groups of counties, as provided in section ~~61-04.1-20~~, to carry out weather modification operations and ~~shall~~, in connection with regulated weather modification operations in a county or geographical region, shall carry on monitoring and evaluation activities.
5. The board may order any person who is conducting weather modification operations in violation of this chapter; or any rules adopted ~~pursuant to it~~ implement this chapter, to cease and desist from ~~such~~

those operations and the order shall be is enforceable in any court of competent jurisdiction within this state.

6. The board may cooperate and contract with any ~~private person or any local, state, or national commission, organization, or agency~~ engaged in activities similar to the work of the board and may make contracts and agreements to carry out programs consistent with the purpose and intent of this chapter. The board may ~~also, in accordance with law,~~ request and accept any grants of funds or services from any ~~such commission, organization, person, or agency,~~ and expend ~~such these~~ funds or use ~~such these~~ services to carry out ~~the provisions of~~ this chapter.
7. 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 this~~ knowledge.
8. The board shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
9. The board may plan and study a hail suppression pilot program that would provide urban and rural hail suppression operations statewide or to any portion of the state.

SECTION 3. AMENDMENT. Section 61-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-09. Board to establish research and development program - Hail suppression pilot program.

1. The board shall establish a program of weather modification research and development in this state. The board shall supervise and coordinate all research and development activities in the state or research and development activities outside of the state participated in or conducted by any state institution or state or county agency.
2. If the board plans and studies a hail suppression pilot program, the board may conduct a planning phase that includes studying the impact on the environment, providing public education, and formulating an operations plan.

SECTION 4. AMENDMENT. Section 61-04.1-20 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-20. Board may create operating districts - Representation of noncontracting counties. The board ~~shall have the authority to~~ may place any county ~~contracting~~ or geographical region for which a person contracts with the state for weather modification operations; in such an any operational district as the board shall deem determines necessary to best provide such that county or geographical region with the benefits of weather modification. In determining the boundaries of ~~such an operating districts district,~~ the board shall consider the patterns of crops within the state, climatic patterns, and the limitations of aircraft and other technical equipment. The board may assign any county ~~which that~~ has not created a weather modification authority under this chapter to an operating

district solely for the purpose of representation on the operations committee of ~~such~~ that district.

SECTION 5. AMENDMENT. Section 61-04.1-21 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-21. District operations advisory committees created - Duties.

1. There ~~shall~~ must be a district operations advisory committee in each operations district created in accordance with section 61-04.1-20. Each committee ~~shall~~ must be composed of one commissioner of the weather modification authority, if a weather modification authority exists, from each county within ~~such~~ the district; a representative of each person contracting for a geographical region assigned to the district; and one member of the board of county commissioners from ~~the each~~ each county ~~or counties~~ assigned to the district ~~in accordance with section 61-04.1-20~~. Each advisory committee ~~shall~~, upon majority vote, with the concurrence of the board, ~~prescribe~~ shall adopt rules and bylaws necessary to govern ~~its~~ that committee's procedures and meetings. Each committee shall evaluate weather modification operations within ~~its~~ respective that committee's district and make recommendations and proposals to the board concerning ~~such~~ these operations.
2. The weather modification authority of any county authorized to contract for weather modification operations under this chapter ~~and~~ which is not assigned to an operations district; shall assume the functions of the district operations committee and ~~shall have and~~ may exercise the powers and duties assigned to the operations committees by this chapter and by the rules of the board.

SECTION 6. AMENDMENT. Section 61-04.1-26 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-26. Tax may be certified by weather modification authority. The weather modification authority may certify annually to the board of county commissioners a tax of not to exceed seven mills upon the taxable valuation of the property in the county for a "weather modification" fund. If weather modification services are not provided to the entire county, the weather modification authority may certify annually to the board of county commissioners a tax for a weather modification fund of not to exceed seven mills upon the taxable valuation of the property in the county designated to receive weather modification services. The tax shall be levied by the board of county commissioners and may be levied in excess of the mill levy limit fixed by law for taxes for general county purposes. The weather modification fund shall be used only for weather modification activities in conjunction with the state of North Dakota. The tax certified by the weather modification authority is limited to the period of existence of the weather modification authority as provided for in this chapter.

SECTION 7. AMENDMENT. Section 61-04.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-38. Board may receive and expend funds. The board is ~~hereby authorized to~~ may receive and accept in the name of the state any ~~and all~~ funds ~~which may be~~ that are offered or become available from any federal grants grant or appropriations appropriation, private gifts gift, donations donation, or bequests bequest, county funds, or funds from any other source; except license and permit

fees, and to expend ~~said~~ these funds for the expense of administering this chapter, and, with the exception of county funds and funds from any other person contracting with the board for weather modification operations, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency in this state ~~either~~ by direct grant, ~~by~~ contract, or ~~by~~ other means.

All federal grants, federal appropriations, private gifts, donations, or bequests, county funds, or funds from any other source, except license and permit fees, received by the board ~~shall~~ must be paid over to the state treasurer, who shall credit ~~same~~ this amount to a special fund in the state treasury known as the "state weather modification fund". All proceeds deposited by the state treasurer in the state weather modification fund are hereby appropriated to the board and ~~shall~~, if expended, must be disbursed by warrant-check prepared by the office of management and budget upon vouchers submitted by the board, and ~~shall~~ must be used for the purpose of paying for the expense of administration of this chapter and, with the exception of county funds or funds from any other person contracting with the board for weather modification operations, for the encouragement of research and development in weather modification by any private person, the North Dakota state university, the university of North Dakota, or any other appropriate state, county, or public agency by direct grant, ~~by~~ contract, or ~~by~~ other means.

SECTION 8. AMENDMENT. Section 61-04.1-39 of the North Dakota Century Code is amended and reenacted as follows:

61-04.1-39. ~~County appropriations~~ Payment for weather modification - State to provide funds. Any ~~county~~ weather modification authority ~~which has~~ or person that contracted with the board for weather modification operations under this chapter shall appropriate to the state weather modification fund ~~such the~~ amount as is determined by the board to be necessary to provide ~~such county that weather modification authority or person~~ with weather modification operations. The board may expend, from the state weather modification fund, ~~such the~~ funds as ~~it the board deems necessary to provide a contracting counties~~ weather modification authority or person with weather modification operations.

SECTION 9. REPEAL. Section 61-04.1-03.1 of the North Dakota Century Code is repealed.

Approved April 9, 1999
Filed April 9, 1999

CHAPTER 539

SENATE BILL NO. 2369

(Senators Fischer, Heitkamp, D. Mathern)
(Representatives Aarsvold, Nelson)

WATER RESOURCE DISTRICT PROJECT NOTICES

AN ACT to amend and reenact sections 61-16.1-18 and 61-16.1-22 of the North Dakota Century Code, relating to water resource district project notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-18 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. The place of hearing must be in the vicinity of the proposed project and must be convenient and accessible for the majority of the landowners subject to assessment for the project or whose property is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of the filing must be included in the notice of hearing. Notices of the hearing must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing must specify the general nature of the project as finally determined by the engineer and the board. The notice of hearing must also specify when and where votes concerning the proposed project may be filed ~~and an~~. The assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto, along with a copy of the notice of the hearing, must be mailed to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The board may send the assessment list and notice by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside and in the official county newspaper of each county in which the benefited lands are located. The date set for the hearing must not be less than twenty days after the mailing of the notice. A record of the hearing must be made by the board, including a list of affected landowners present in person or by agent, and the record must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, must be informed at the hearing of the probable total cost of the project and their individual share of the cost and the portion of their property, if any, to be condemned for the project.

SECTION 2. AMENDMENT. Section 61-16.1-22 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-22. Assessment list to be published - Notice of hearing - Alteration of assessments - Confirmation of assessment list - Filing. After entering an order establishing the project, the water resource board shall cause the assessment list to be published once each week for two successive weeks in the newspaper or newspapers of general circulation in the district and in the official county newspaper of each county in which the benefited lands are located together with a notice of the time when, and place where, the board will meet to hear objections to any assessment by any interested party, or an agent or attorney for that party. The board also shall mail a copy of the notice to each affected landowner at the landowner's address as shown by the tax rolls of the county or counties in which the affected property is located. The date set for the hearing ~~shall~~ may not be not less than twenty days after the ~~first publication~~ mailing of the notice. At the hearing, the board may make such alterations in the assessments as in its opinion may be just and necessary to correct any error in the assessment but must make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which ~~such the~~ assessments are made, or the part of ~~such the~~ cost to be paid by special assessment. ~~No~~ An assessment ~~shall~~ may not exceed the benefit as determined by the board to the parcel of land or political subdivision assessed. The board shall then confirm the assessment list and the secretary shall attach to the list a certificate that the same is correct as confirmed by the board and ~~thereupon~~ shall file the list in the office of the secretary.

Approved March 19, 1999

Filed March 19, 1999

CHAPTER 540

HOUSE BILL NO. 1417 (Representatives Gorder, Herbel) (Senator Tallackson)

DRAIN OBSTRUCTION REMOVAL AND DRAIN CLOSURE

AN ACT to amend and reenact sections 61-16.1-51, 61-16.1-53, 61-21-43.1, 61-21-67, and 61-32-07 of the North Dakota Century Code, relating to the time within which obstructions to drains, noncomplying dikes or dams, and noncomplying drains must be removed or closed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If ~~the~~ a water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within such period as the board ~~shall determine~~ determines, but not less than ~~thirty~~ fifteen days, the board shall procure removal of the obstruction and assess the cost ~~thereof~~ of the removal, or ~~such~~ the portion as the board ~~shall determine~~ determines appropriate, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of ~~such~~ the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. ~~Any assessments~~ Assessments levied under the provisions of this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions~~ of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

For the purposes of this section, "an obstruction to a drain" means ~~any~~ a barrier to a watercourse, as defined by section 61-01-06, or ~~any~~ an artificial drain, which materially affects the free flow of waters in ~~such~~ the watercourse or drain.

SECTION 2. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules ~~promulgated~~ adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the dike, dam, or other device is not removed within ~~such the period as~~ the period as the board ~~shall determine~~ determines, but not less than ~~thirty fifteen~~ thirty fifteen days, the board shall cause the removal of the dike, dam, or other device and assess the cost ~~thereof of the removal~~, or ~~such the portion as~~ such the portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing upon the matter. Upon receipt of ~~such the~~ demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device. ~~Any assessments~~ Assessments levied under ~~the provisions of~~ this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any A~~ A person aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not prerequisite to ~~such an~~ appeal.

SECTION 3. AMENDMENT. Section 61-21-43.1 of the North Dakota Century Code is amended and reenacted as follows:

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or landowner's tenant, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if the obstruction is not removed within ~~such the period as~~ the period as the board determines, but not less than ~~thirty fifteen~~ thirty fifteen days, the board shall procure removal of the obstruction and assess the cost ~~thereof of the removal~~, or ~~such the portion as~~ such the portion as the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting ~~such a the~~ the landowner or landowner's tenant to maintain ~~such an the~~ the obstruction. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro

rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

SECTION 4. AMENDMENT. Section 61-21-67 of the North Dakota Century Code is amended and reenacted as follows:

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this chapter or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post office of record. A copy of the notice must also be sent to the tenant, if any. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within ~~such~~ the period as the board determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, of such or the portion ~~as~~ the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand in writing a hearing upon the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. ~~Any~~ A landowner aggrieved by action of the board under ~~the provisions of~~ this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for in section 28-34-01. A hearing as provided for in this section is not a prerequisite to ~~such~~ an appeal.

SECTION 5. AMENDMENT. Section 61-32-07 of the North Dakota Century Code is amended and reenacted as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction - Frivolous complaints. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to ~~the provisions of~~ this title or any rules adopted by the board, the board shall notify the landowner by registered mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and must state that if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as the board determines, but not less than ~~thirty~~ fifteen days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost ~~thereof~~ of the closing or filling, or such the portion ~~as~~

the board determines, against the property of the landowner responsible. The notice must also state that the affected landowner ~~may~~, within fifteen days of the date the notice is mailed, may demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. ~~Any assessments~~ Assessments levied under this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. ~~Any~~ A person aggrieved by action of the board under this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided in section 28-34-01. A hearing as provided for in this section is not a prerequisite to an appeal. If, after the first complaint, in the opinion of the board, the complaint is frivolous, the board may assess the costs of the frivolous complaint against the complainant.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 541

HOUSE BILL NO. 1139

(Natural Resources Committee)
(At the request of the State Engineer)

WATER RESOURCE BOARD APPEALS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to appeals of water resource board decisions of noncomplying dams, dikes, or other devices to the state engineer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Appeal of board decisions - State engineer review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by registered mail. The board's decision may be appealed to the state engineer by any aggrieved party. The appeal to the state engineer must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the state engineer which must specifically set forth the reason why the appealing party believes the board's decision is erroneous. The appealing party shall also submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The state engineer shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The state engineer may enter property affected by the complaint for the purpose of investigating the complaint.

If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the state engineer. The state engineer, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board, or by personally conducting the investigation and personally making the determination. If the state engineer determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the state engineer shall take one of these three actions:

1. Notify the landowner by registered mail at the landowner's post-office address of record;
2. Return the matter to the jurisdiction of the board along with the investigation report; or
3. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.

If the state engineer decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and must state that if the dam, dike, or other device is not removed within such reasonable time as the state engineer determines, but not less than thirty days, the state engineer shall procure the removal of the dam, dike, or other device and assess the cost of removal against the property of the responsible landowner. The notice from the state engineer must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the state engineer shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the state engineer shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and are hereby appropriated out of the state treasury and must be credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the state engineer under this section may appeal the decision of the state engineer to the district court in accordance with chapter 28-32. A hearing by the state engineer as provided for in this section is a prerequisite to such an appeal.

If the state engineer, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the state engineer's decision in accordance with the terms of this section.

If the state engineer, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, which must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint in accordance with the statutory responsibilities prescribed in chapter 11-16.

In addition to the penalty imposed by the court in the event of conviction under this statute, the court shall order the dam, dike, or other device removed within such reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost thereof against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

The authority granted in this section may only be exercised for dams, dikes, or other devices constructed after the effective date of this Act.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 542

HOUSE BILL NO. 1167

(Natural Resources Committee)
(At the request of the State Engineer)

FLOODPLAINS

AN ACT to create and enact a new section to chapter 11-33.2, a new subsection to section 61-16.2-02, and a new section to chapter 61-16.2 of the North Dakota Century Code, relating to identifying the floodplain on plats, definition of community, and state engineer review of uses in floodways; to amend and reenact subsection 2 of section 11-33-03, subsection 2 of section 40-47-03, subsection 11 of section 40-50.1-01, sections 58-03-12, 61-16.2-04, 61-16.2-08, and 61-16.2-13 of the North Dakota Century Code, relating to emergency management, identifying floodplain on plats, delineation of the floodway for lakes, elevation of structure in the floodway, and mandatory community participation in the flood insurance program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. To ~~secure safety from fire, flood, and other dangers~~ provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

SECTION 2. A new section to chapter 11-33.2 of the North Dakota Century Code is created and enacted as follows:

Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain. Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the state engineer or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 3. AMENDMENT. Subsection 2 of section 40-47-03 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Secure safety from fire, panic, and other dangers~~ Provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;

SECTION 4. AMENDMENT. Subsection 11 of section 40-50.1-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Any plat which includes lands abutting upon any lake, river, or stream must show; ~~for the purpose of information only~~, a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the state ~~water commission engineer~~ or a federal ~~emergency management~~ agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable bench mark described on the plat ~~together~~ with its location and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 5. AMENDMENT. Section 58-03-12 of the North Dakota Century Code is amended and reenacted as follows:

58-03-12. Basis for township zoning regulations and restrictions. The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, ~~and~~ promote health, safety, and general welfare, and provide for emergency management. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

SECTION 6. A new subsection to section 61-16.2-02 of the North Dakota Century Code is created and enacted as follows:

"Community" means any political subdivision that has the authority to zone.

SECTION 7. AMENDMENT. Section 61-16.2-04 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-04. Delineation of floodplains and floodways. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the state engineer shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

SECTION 8. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

1. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:
 4. a. Any use permitted in the designated floodway pursuant to section 61-16.2-06.
 2. b. Structures, including residential, commercial, and industrial structures; provided, that:
 - a. (1) Such structures meet the standards either adopted by the community or ~~under this chapter, whichever are more restrictive~~ if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.
 - b. (2) Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to ~~at least one foot [30.48 centimeters]~~ at least one foot [30.48 centimeters] above the base flood level unless granted a residential floodproof exception under the national flood insurance program.
 - c. (3) Commercial and industrial structures are either constructed on fill as specified in ~~subdivision b paragraph 2~~ paragraph 2 or are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

2. a. Standards adopted by the community for structures in the flood fringe must meet or exceed the following:
- (1) Residential structures must be constructed on fill so that the lowest floor, including basements, is elevated to or above the base flood level unless granted a residential floodproof exception under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.].
 - (2) Commercial and industrial structures must be constructed on fill as specified in subdivision a or must be adequately floodproofed up to an elevation no lower than the base flood level. The floodproofing must be in accordance with the standards adopted by the community under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.
- b. Communities are encouraged to adopt standards that require residential structures to be constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level and commercial and industrial structures are constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level or the structures are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level.

SECTION 9. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance - State policy. It is the policy of this state that all communities that have residential, commercial, or industrial structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 10. A new section to chapter 61-16.2 of the North Dakota Century Code is created and enacted as follows:

State engineer review of development in mapped floodways - Exceptions. Before issuing a permit or authorization to allow a use in a mapped regulatory floodway, the community responsible for permitting or authorizing such use shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other information analyzing the proposed use and identifying its proposed impact. Upon the request of the state engineer, the community shall provide additional information needed by the state engineer for the state engineer's review. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the

technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law.

SECTION 11. EFFECTIVE DATE. Section 8 of this Act becomes effective on August 1, 2000.

Approved April 9, 1999

Filed April 9, 1999

CHAPTER 543

HOUSE BILL NO. 1166

(Natural Resources Committee)

(At the request of the State Water Commission)

NORTHWEST AREA WATER SUPPLY PROJECT RATES, FUNDS, COSTS, AND SERVICE

AN ACT to create and enact five new sections to chapter 61-24.6 of the North Dakota Century Code, relating to water rates, operation and maintenance fund, reserve fund for replacement, capital costs, and areas served by the northwest area water supply project; and to amend and reenact sections 61-02-23.1, 61-24.3-19, and subsections 3, 6, and 7 of section 61-24.6-02 of the North Dakota Century Code, relating to condemnation of property for the northwest area water supply project, validation of southwest pipeline project water service contracts, and inclusion of Pierce County in the northwest area water supply project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-23.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-23.1. Condemnation by the water commission. Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by ~~chapter~~ chapters 61-24.3 or 61-24.6, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of ~~such~~ the deposit. Within thirty days after receiving ~~such~~ notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury ~~be~~ is waived, in the manner prescribed for trials under chapter 32-15.

SECTION 2. AMENDMENT. Section 61-24.3-19 of the North Dakota Century Code is amended and reenacted as follows:

61-24.3-19. Validation of water service contracts. Water service contracts entered ~~into~~ by the commission for the distribution and sale of water to water user entities from the southwest pipeline project are ~~hereby deemed~~ confirmed and approved by the legislative assembly. The commission may commence a special proceeding in and by which the proceedings of the commission and the making of water service contracts ~~shall be~~ are judicially examined, approved, and confirmed, or disapproved and disaffirmed. ~~Such~~ The proceeding ~~shall~~ must comply as nearly as possible with the procedure authorized by sections 61-07-22 through 61-07-28 for irrigation district contracts. The requirements of section 40-33-16 are not applicable to contracts between the state water commission and cities for water service from the southwest pipeline project, provided the contracts were approved by the city governing body and executed before January 1, 1999.

SECTION 3. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Commission to fix water rates for the northwest area water supply project.

The commission shall establish the payments for water service to be paid by water user entities for purchase of water from the northwest area water supply project. The payments for water service must include each water user entity's proportionate share of the operation, maintenance, and replacement costs, and also include a component for payment for capital costs. The commission shall include in its determination of each water user entity's share of operation, maintenance, and replacement costs an amount to be deposited in the northwest area water supply project reserve fund for replacement, as established by section 4 of this Act, for replacement and extraordinary maintenance of northwest area water supply project works. The amount of such the reserve fund for replacement must be determined by the commission.

SECTION 4. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Operation and maintenance fund - Deposit - Use. Revenues received by the commission from water user entities or otherwise for operation and maintenance of the northwest area water supply project must be maintained, as a part of the moneys of the state received and kept by the state treasurer in a fund to be designated as the northwest area water supply project operation and maintenance fund. All moneys received by the state treasurer for operation and maintenance of the northwest area water supply project and the interest on moneys in the fund must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for paying for costs and expenditures for operation and maintenance of the northwest area water supply project.

SECTION 5. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Reserve fund for replacement - Deposit - Use. Revenues received by the commission from water user entities or otherwise for replacement and extraordinary maintenance of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as a part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project reserve fund for replacement. All moneys received by the state treasurer for replacement and extraordinary maintenance of the northwest area water supply project and the interest on the moneys must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for replacement and extraordinary maintenance of the northwest area water supply project.

SECTION 6. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Capital costs - Deposit - Use. Money derived and received from water user entities or otherwise for capital costs or construction of the northwest area water supply project may be held pursuant to the terms of a resolution or trust indenture adopted by the commission. Any money not held pursuant to the terms of a resolution or trust indenture must be deposited by the commission and maintained, as part of the moneys of the state received and kept by the state treasurer, in a fund designated as the northwest area water supply project fund for capital costs and construction. All moneys received by the state treasurer for capital costs and construction of the northwest area water supply project, and all interest on the

moneys, must be kept by the state treasurer in the fund distinct from all other moneys and must be disbursed by the state treasurer and used only for capital costs and construction of the northwest area water supply project.

SECTION 7. AMENDMENT. Subsections 3, 6, and 7 of section 61-24.6-02 of the North Dakota Century Code are amended and reenacted as follows:

3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.

SECTION 8. A new section to chapter 61-24.6 of the North Dakota Century Code is created and enacted as follows:

Areas served by the northwest area water supply project. The commission may provide, as part of the northwest area water supply project, delivery, distribution, and treatment of water from the Missouri River or other sources, to areas in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, and Williams Counties. The facilities for delivery of water may be from a pipeline transmission and delivery system or through other works, as determined by the commission.

Approved April 8, 1999
Filed April 8, 1999

CHAPTER 544

HOUSE BILL NO. 1140 (Natural Resources Committee) (At the request of the State Engineer)

WATER DISTRICT ELECTIONS, DISSOLUTIONS, AND MERGERS

AN ACT to amend and reenact sections 61-35-04, 61-35-07, 61-35-08, and subsection 1 of section 61-35-25 of the North Dakota Century Code, relating to payment of publication costs to create a water district, election of a board of a water district, and notice of dissolution or merger of a rural water corporation or cooperative.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-35-04 of the North Dakota Century Code is amended and reenacted as follows:

61-35-04. Hearing after filing. When a petition for the organization of a district is filed with the state engineer, the state engineer shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The state engineer shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be:

1. ~~Published~~ published in the official county newspapers in the counties included within the district.
2. ~~Transmitted with a copy of the original petition to the state engineer~~ The applicant shall pay all costs of the publication notice.

SECTION 2. AMENDMENT. Section 61-35-07 of the North Dakota Century Code is amended and reenacted as follows:

61-35-07. Findings - Order. After the hearing, the state engineer may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the state engineer does not find that the district is reasonably necessary, the state engineer shall dismiss the petition. If the state engineer finds that required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the state engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order shall be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall pay all costs of the publication of the order. The state engineer shall prepare and preserve a complete record of the hearing on the petition and the state engineer's findings and action.

SECTION 3. AMENDMENT. Section 61-35-08 of the North Dakota Century Code is amended and reenacted as follows:

61-35-08. Meeting of members - Election of board. As a part of the order organizing the district, the state engineer shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the ~~hearing~~ order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

³⁶⁴ **SECTION 4. AMENDMENT.** Subsection 1 of section 61-35-25 of the North Dakota Century Code is amended and reenacted as follows:

1. After final approval of the petition by the state engineer, the secretary of the corporation or cooperative shall file a notice with the ~~corporation or cooperative~~ secretary of state or attorney general, if applicable, in accordance with title 10.

Approved March 16, 1999
Filed March 16, 1999

³⁶⁴ Section 61-35-25 was also amended by section 78 of House Bill No. 1045, chapter 50.

WEAPONS

CHAPTER 545

HOUSE BILL NO. 1447

(Representatives Weisz, Brusegaard, DeKrey, Delzer, Timm)

WEAPONS PERMITS AND POSSESSION

AN ACT to create and enact a new subdivision to subsection 1 of section 62.1-04-03 of the North Dakota Century Code, relating to who may have a concealed weapons permit; to amend and reenact section 62.1-02-01 of the North Dakota Century Code, relating to possession of weapons; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in ~~North Dakota~~ this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.

4. A person under the age of eighteen years may not possess a handgun except that such a person ~~may~~, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, the defendant's conviction has been reduced in accordance with subsection 10 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

SECTION 2. A new subdivision to subsection 1 of section 62.1-04-03 is created and enacted as follows:

The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.

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

Approved April 9, 1999
Filed April 9, 1999

WEEDS

CHAPTER 546

HOUSE BILL NO. 1256

(Representatives Monson, D. Johnson, Nichols)
(Senators Heitkamp, Sand, Thane)

NOXIOUS WEED CERTIFICATION

AN ACT to amend and reenact section 63-01.1-12.2 of the North Dakota Century Code, relating to noxious weed certification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 63-01.1-12.2 of 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 North Dakota state university extension service, may adopt rules for certifying that gravel, scoria, or sand surface mining operations and land producing hay for sale or for resale are not contaminated with noxious weeds. The rules must identify the extent noxious weeds are allowed with certification.
2. The county weed board, after consultation with the North Dakota state university extension service, may certify gravel, scoria, or sand surface mining operations and 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 North Dakota state university extension service may charge for inspecting, testing, analyzing, and certifying gravel, scoria, or sand surface mining operations and hay land.
4. Certification of gravel, scoria, 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 location. The only representation made is that 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.

Approved April 9, 1999

Filed April 9, 1999

WEIGHTS, MEASURES, AND GRADES

CHAPTER 547

HOUSE BILL NO. 1155

(Agriculture Committee)

(At the request of the Public Service Commission)

WEIGHING DEVICE TESTING AND TRANSIENT VENDOR DEFINITION

AN ACT to create and enact a new section to chapter 64-02 of the North Dakota Century Code, relating to testing of weighing devices; and to amend and reenact section 64-02-01 of the North Dakota Century Code, relating to the definition of transient vendors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 64-02-01 of the North Dakota Century Code is amended and reenacted as follows:

64-02-01. Definitions. In this title:

1. "Calibrate" means to compare a standard, or weighing or measuring device, to another standard and eliminate by adjustment any variation in the accuracy of the item being compared, but does not include the field repair of a weighing or measuring device.
2. "Commission" means the public service commission.
3. "Test" means to measure to determine if a standard, or weighing or measuring device, is within the permitted tolerance.
4. "Transient vendor" means a wholesale or retail seller of produce, fruit, nuts, or seafood that sells to the public at a temporary location, on a seasonal basis, open less than one hundred twenty business days each year.
5. "Weighing or measuring device" means any scale, weight, measure, instrument, or device used or offered for use for weighing or measuring in commerce.

SECTION 2. A new section to chapter 64-02 of the North Dakota Century Code is created and enacted as follows:

Exception from annual test of weighing or measuring device. A weighing or measuring device used to conduct sales by a transient vendor is exempt from this chapter.

Approved March 25, 1999
Filed March 25, 1999

WORKERS' COMPENSATION

CHAPTER 548

HOUSE BILL NO. 1266

(Representative Berg)

BUREAU CAPITAL PURCHASES

AN ACT relating to the expenditure of bureau funds for capital purchases; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purchase of building and property - Authority. The bureau may contract to purchase a building and property to house its operations only if the following requirements are satisfied:

1. Completion of a certified appraisal of the building and property to be purchased;
2. Completion of a physical inspection of the building to be purchased demonstrating that the building is structurally sound and suitable for housing bureau operations;
3. Completion of a cost-benefit analysis demonstrating that purchasing a building and property would be economically advantageous in that it would generate a higher yield compared to investing the anticipated purchase price with the same investment allocation as the workers' compensation fund;
4. The cost-benefit analysis must consider alternative locations to house bureau operations;
5. The building and property purchase must include adequate land to satisfy parking requirements of bureau staff and anticipated visitors; and
6. Approval of the purchase by the workers compensation board of directors after consideration of the certified appraisal, physical inspection report, and cost-benefit analysis.

SECTION 2. CONTINUING APPROPRIATION. Money in the workers' compensation fund is hereby appropriated on a continuing basis to defray the costs of a purchase under this Act. The independent annual financial audit of the bureau must report any expenditures made pursuant to this Act.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Filed April 13, 1999

NOTE: The Governor's veto of House Bill No. 1266 was not sustained. For the text of the Governor's veto message see chapter 564.

CHAPTER 549

HOUSE BILL NO. 1331 (Representatives Keiser, Berg, Wald)

INTENTIONAL WORK-RELATED INJURIES AND FRAUD

AN ACT to create and enact a new section to chapter 65-01 of the North Dakota Century Code, relating to civil liability for intentional work-related injuries; to amend and reenact sections 65-01-05, 65-02-23, 65-04-14, 65-09-01, and 65-09-02 of the North Dakota Century Code, relating to employer and provider fraud and to the liability of a noncomplying employer for work-related injuries; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-01 of the North Dakota Century Code is created and enacted as follows:

Civil liability for intentional injuries. The sole exception to an employer's immunity from civil liability under this title, except as provided in chapter 65-09, is an action for an injury to an employee caused by an employer's intentional act done with the conscious purpose of inflicting the injury.

SECTION 2. AMENDMENT. Section 65-01-05 of the North Dakota Century Code is amended and reenacted as follows:

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction. It is unlawful for any employer to employ anyone, or to receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first making application for workers' compensation insurance coverage for the protection of such employees by notice to the bureau of the intended employment, the nature thereof, and the estimated payroll expenditure for the coming twelve-month period. Failure to secure workers' compensation coverage for employees by application for workers' compensation insurance constitutes a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage is a class C felony. Where the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workers' compensation coverage under this section. In addition to the penalties prescribed by this section the bureau may, by injunction proceedings as provided for in this title, enjoin any employer from unlawfully employing uninsured workers.

³⁶⁵ **SECTION 3. AMENDMENT.** Section 65-02-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³⁶⁵ Section 65-02-23 was also amended by section 4 of House Bill No. 1325, chapter 553.

65-02-23. Workers' compensation fraud unit - Continuing appropriation. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance audit of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

SECTION 4. AMENDMENT. Section 65-04-14 of the North Dakota Century Code is amended and reenacted as follows:

65-04-14. False payroll report - Liability of employer - Collection and disposition of penalty. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or willfully fails to secure coverage for employees, is liable to the state in the amount of two thousand dollars plus ten times the amount of the difference between the premium paid and the amount of premium the employer should have paid. The bureau shall collect a penalty imposed under this section in a civil action in the name of the state, and the bureau shall deposit a penalty collected under this section to the credit of the fund. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or willfully fails to secure coverage for employees, is guilty of a class A misdemeanor, but if the difference between the premium paid and the amount the employer should have paid is more than five hundred dollars, the offense is a class C felony.

SECTION 5. AMENDMENT. Section 65-09-01 of the North Dakota Century Code is amended and reenacted as follows:

65-09-01. Liability of uninsured employer for injury to employees.

1. Any employer subject to this title who ~~fails to comply with chapter 65-04 is liable~~ is in violation of section 65-04-14 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and ~~is liable~~ to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable ~~also~~ for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

SECTION 6. AMENDMENT. Section 65-09-02 of the North Dakota Century Code is amended and reenacted as follows:

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing. An employee whose employer ~~has failed to comply with chapter 65-04~~ is in violation of section 65-04-14, who has been injured in the course of employment, or the employee's dependents or legal representatives in case death has ensued, may file an application with the bureau for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The bureau is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original claim for compensation within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and subsequently shall hear and determine the application for compensation as it would for other claims before the bureau. A determination by the bureau that a person is not an employer required to obtain workers' compensation coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 550

HOUSE BILL NO. 1332 (Representatives Keiser, Berg, Wald)

WORKERS' COMPENSATION DEFINITIONS, TREATMENT, AND COVERAGE

AN ACT to amend and reenact section 65-01-02, subsection 4 of section 65-05-28, subsection 1 of section 65-05-28.2, and section 65-07-01 of the North Dakota Century Code, relating to workers compensation definitions, medical treatment, and coverage; to repeal section 65-07-04 of the North Dakota Century Code, relating to calculation of the wages of a self-employed person; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁶⁶ **SECTION 1. AMENDMENT.** Section 65-01-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. The term does not include eyeglasses or contact lenses unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
4. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the date of first disability. The average weekly wage as determined under this ~~section~~ subsection must be rounded to the nearest dollar. In cases where the employee's wages are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

³⁶⁶ Section 65-01-02 was also amended by section 1 of House Bill No. 1422, chapter 551.

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g of this subsection, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the ~~injury~~ date of first disability or during the tax year preceding the ~~injury~~ date of first disability, or during an average of the three tax years preceding the ~~injury~~ date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employee is determined by the following formula: one-fiftieth of the net profits based on the preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the North Dakota workers compensation board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless he or she actually is dependent.
 9. "Bureau" means the North Dakota workers compensation bureau, or 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.
 10. "Child", for determining eligibility for benefits under chapter 65-05, means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee

for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but ~~shall~~ does not include a married child unless actually dependent.

11. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.
 - a. The term includes:
 - (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
 - (2) An injury to artificial members.
 - (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
 - (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
 - (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.
 - b. The term does not include:
 - (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases.
 - (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.

- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
 - (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers, or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
 - (5) An injury that arises out of an illegal act committed by the injured employee.
 - (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
 - (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
 - (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
 - (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
 - (10) A mental injury arising from mental stimulus ~~or a mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except an action that is the intentional infliction of emotional harm.~~
12. "Date of first disability" means the first date the employee was unable to work ~~in relation to~~ because of a compensable injury.
 13. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
 14. "Director" means the director of the bureau.
 15. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.
 16. "Doctor" means doctor of medicine, ~~chiropractor,~~ or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.

17. "Employee" means a person who performs services hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test; ~~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) County general assistance workers except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
 - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workers' compensation benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the 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.
 - (2) Any person who is engaged in an illegal enterprise or occupation.
 - (3) The spouse of an employer or a child under the age of twenty-two of the an employer dwelling in the household of the employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (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.
 - (6) 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.
 - (7) An employer.
- 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 for the coverage. 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.
18. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation, having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.
 - h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.

- i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
19. "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.
20. "Fund" means the North Dakota workers' compensation fund.
21. "Grandchild" and the terms defined in subsections 7 and 9 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.
22. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
 - a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
23. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
24. ~~"Orphan" means a child who has no lawful parent.~~
- ~~25.~~ "Parent" includes a stepparent and a parent by adoption.
- ~~26.~~ 25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.
- ~~27.~~ 26. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:
 - a. Nature of injury.
 - b. Degree of physical impairment.

- c. Education.
 - d. Work history.
 - e. Vocational rehabilitation potential.
- ~~28.~~ 27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
- ~~29.~~ 28. "Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.
- ~~30.~~ 29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
- ~~34.~~ 30. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~32.~~ 31. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Subsection 4 of section 65-05-28 of the North Dakota Century Code is amended and reenacted as follows:

- 4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination or treatment, or refuses ~~reasonably~~ to reasonably participate in medical or other treatments or examinations, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 3. AMENDMENT. Subsection 1 of section 65-05-28.2 of the North Dakota Century Code is amended and reenacted as follows:

- 1. During the first sixty days after a ~~compensable work~~ injury, an employee of an employer who has selected a preferred provider under this section may seek medical treatment only from the preferred provider for the injury. Treatment by a provider other than the preferred provider is not compensable and the bureau may not pay for treatment

by a provider who is not a preferred provider, unless a referral was made by the preferred provider. A provider who is not a preferred provider may not certify disability or render an opinion about any matter pertaining to the injury, including causation, compensability, impairment, or disability. This section does not apply to emergency care nor to any care the employee reasonably did not know was related to a compensable work injury.

SECTION 4. AMENDMENT. Section 65-07-01 of the North Dakota Century Code is amended and reenacted as follows:

65-07-01. Employer, spouse and children of employer, self-employed, and volunteers may secure coverage. Any employer, by special contract with the bureau, may secure insurance protection against workers' compensation coverage for injuries to the employer's own person or for the employer's own death when such injury or death occurs in the course of the employer's work in an industry in which the employer has secured such protection against injuries to the employer's employees. Any employer also may secure such coverage for that employer's spouse and children living in the same household as the employer. Self-employed persons may contract with the bureau for insurance protection workers' compensation coverage for themselves. In addition, any volunteer organization, not otherwise provided for under this title, may contract with the bureau for such insurance protection workers' compensation coverage for its own members while such its members are engaged in the specific activity provided for in such the contract.

SECTION 5. REPEAL. Section 65-07-04 of the North Dakota Century Code is repealed.

SECTION 6. EFFECTIVE DATE. The change in subdivision a of subsection 5 of section 1 of this Act dealing with calculation of disability benefits for seasonal employment for up to the first twenty-eight consecutive days of disability is effective for all claims filed for injuries occurring after July 31, 1999. The remainder of section 1 and sections 2 and 3 of this Act are effective for all claims, regardless of the date of the injury. Section 4 is effective for all employer accounts regardless of the date the account was established. Section 5 is effective August 1, 1999.

Approved March 22, 1999
Filed March 23, 1999

CHAPTER 551

HOUSE BILL NO. 1422

(Representative Berg)

PERMANENT IMPAIRMENT AWARDS

AN ACT to amend and reenact subsection 26 of section 65-01-02 and section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation awards for permanent impairment; to provide for a study of workers' compensation permanent impairment awards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁶⁷ **SECTION 1. AMENDMENT.** Subsection 26 of section 65-01-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement ~~or recovery~~, and includes disfigurement resulting from an injury. ~~The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment". Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment", must be determined by clear and convincing medical evidence.~~

SECTION 2. AMENDMENT. Section 65-05-12.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid. When a compensable injury ~~results in~~ causes permanent ~~loss of, or loss of use of, a member of the body~~ impairment, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the

³⁶⁷ Section 65-01-02 was also amended by section 1 of House Bill No. 1332, chapter 550.

employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.

2. ~~If a compensable injury that occurs after July 31, 1995, causes permanent impairment, the~~ The bureau shall calculate the amount of the lump sum payable under subsection 4 award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar on the date of the original injury, by the number of weeks specified in subsection 15 10. The bureau shall pay permanent impairment benefits under subsection 4 at the rate of one hundred twenty-two dollars per week for a compensable injury that occurred before August 1, 1995.
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and ~~that~~ which were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.
5. An injured employee is ~~not~~ eligible for an evaluation for ~~of~~ permanent impairment ~~until the employee is at~~ only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. ~~A doctor making an evaluation for permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned.~~ If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. ~~Unless otherwise provided by this section, a doctor evaluating the impairment of an injured employee shall use the edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" in effect on the date of the employee's evaluation to establish a rating for impairment of function. A doctor evaluating the impairment of an injured employee resulting from a mental disorder shall use the edition of the American psychiatric association's "Diagnostic and Statistical Manual of Mental Disorders" in effect on the date of the employee's evaluation to establish a rating for the impairment. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings~~

assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. Until rules adopted under this subsection become effective, impairments must be evaluated under the fourth edition, third printing, of the guides.

7. The bureau shall deduct, on a whole body impairment basis, from a subsequent an award for impairment under this section, any previous impairment award given or calculated on an earlier claim or the same claim for that same member or body part under the workers' compensation laws of any jurisdiction.
8. ~~A rating for impairment of function from an injury to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be calculated based solely on the percentage the impairment of function bears to total impairment of function of the whole body.~~
9. ~~A rating for impairment of function of the cervical, thoracic, lumbar, or sacral spine must be calculated according to the doctor's diagnosis of the employee's injury or condition that is directly related to the compensable work injury. The rating may not include a rating for other factors, including loss of range of motion, pain, loss of strength, loss of sensation, and radiculopathy unless established by unequivocal electrodiagnostic evidence of nerve root compromise.~~
10. ~~A rating of impairment of function resulting from injuries other than amputations, injuries to the cervical, thoracic, lumbar, or sacral spine, and injuries to the spinal cord resulting in paraplegia, hemiplegia, or quadriplegia must be based on a diagnosis directly related to the compensable work injury, if the American medical association's "Guides to the Evaluation of Permanent Impairment" provide for an impairment on a diagnostic basis.~~
11. ~~A rating for impairment of function for loss of strength and sensation must be based on objective medical evidence of nerve damage.~~
12. ~~A rating of impairment of function due to loss of range of motion must be based on objective medical evidence of structural damage to a joint or loss of motor function.~~
13. ~~An injured employee is not entitled to a permanent impairment award due solely to pain.~~
44. 9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under this section subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment that which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or

representatives shall request an impairment award under this subsection within one year from the date of death of the employee.

- 45- 10. If the injury causes permanent impairment, the award must be determined based on the percentage ~~the~~ of whole body impairment ~~bears to total impairment must be determined~~ in accordance with the first applicable whole body impairment the following schedule:

| | |
|---------------------------------------|---------------------------------|
| For one to fifteen percent impairment | 0 weeks |
| For sixteen percent impairment | 5 <u>10</u> weeks |
| For seventeen percent impairment | 5 <u>10</u> weeks |
| For eighteen percent impairment | 40 <u>15</u> weeks |
| For nineteen percent impairment | 40 <u>15</u> weeks |
| For twenty percent impairment | 45 <u>20</u> weeks |
| For twenty-one percent impairment | 45 <u>20</u> weeks |
| For twenty-two percent impairment | 20 <u>25</u> weeks |
| For twenty-three percent impairment | 20 <u>25</u> weeks |
| For twenty-four percent impairment | 20 <u>30</u> weeks |
| For twenty-five percent impairment | 25 <u>30</u> weeks |
| For twenty-six percent impairment | 30 <u>35</u> weeks |
| For twenty-seven percent impairment | 35 weeks |
| For twenty-eight percent impairment | 40 weeks |
| For twenty-nine percent impairment | 45 weeks |
| For thirty percent impairment | 50 weeks |
| For thirty-one percent impairment | 60 weeks |
| For thirty-two percent impairment | 70 weeks |
| For thirty-three percent impairment | 80 weeks |
| For thirty-four percent impairment | 90 weeks |
| For thirty-five percent impairment | 100 weeks |
| For thirty-six percent impairment | 110 weeks |
| For thirty-seven percent impairment | 120 weeks |
| For thirty-eight percent impairment | 130 weeks |
| For thirty-nine percent impairment | 140 weeks |
| For forty percent impairment | 150 weeks |
| For forty-one percent impairment | 160 weeks |
| For forty-two percent impairment | 170 weeks |
| For forty-three percent impairment | 180 weeks |
| For forty-four percent impairment | 190 weeks |
| For forty-five percent impairment | 200 weeks |
| For forty-six percent impairment | 210 weeks |
| For forty-seven percent impairment | 220 weeks |
| For forty-eight percent impairment | 230 weeks |
| For forty-nine percent impairment | 240 weeks |
| For fifty percent impairment | 250 <u>260</u> weeks |
| For fifty-one percent impairment | 265 <u>280</u> weeks |
| For fifty-two percent impairment | 280 <u>300</u> weeks |
| For fifty-three percent impairment | 295 <u>320</u> weeks |
| For fifty-four percent impairment | 310 <u>340</u> weeks |
| For fifty-five percent impairment | 325 <u>360</u> weeks |
| For fifty-six percent impairment | 340 <u>380</u> weeks |
| For fifty-seven percent impairment | 355 <u>400</u> weeks |
| For fifty-eight percent impairment | 370 <u>420</u> weeks |
| For fifty-nine percent impairment | 385 <u>440</u> weeks |
| For sixty percent impairment | 400 <u>465</u> weeks |
| For sixty-one percent impairment | 415 <u>490</u> weeks |
| For sixty-two percent impairment | 430 <u>515</u> weeks |

| | |
|--|-----------------------------------|
| For sixty-three percent impairment | 445 <u>540</u> weeks |
| For sixty-four percent impairment | 460 <u>565</u> weeks |
| For sixty-five percent impairment | 475 <u>590</u> weeks |
| For sixty-six percent impairment | 490 <u>615</u> weeks |
| For sixty-seven percent impairment | 505 <u>640</u> weeks |
| For sixty-eight percent impairment | 520 <u>665</u> weeks |
| For sixty-nine percent impairment | 535 <u>690</u> weeks |
| For seventy percent impairment | 550 <u>715</u> weeks |
| For seventy-one percent impairment | 565 <u>740</u> weeks |
| For seventy-two percent impairment | 580 <u>765</u> weeks |
| For seventy-three percent impairment | 595 <u>790</u> weeks |
| For seventy-four percent impairment | 610 <u>815</u> weeks |
| For seventy-five percent impairment | 625 <u>840</u> weeks |
| For seventy-six percent impairment | 640 <u>865</u> weeks |
| For seventy-seven percent impairment | 655 <u>890</u> weeks |
| For seventy-eight percent impairment | 670 <u>915</u> weeks |
| For seventy-nine percent impairment | 685 <u>940</u> weeks |
| For eighty percent impairment | 700 <u>965</u> weeks |
| For eighty-one percent impairment | 715 <u>990</u> weeks |
| For eighty-two percent impairment | 730 <u>1015</u> weeks |
| For eighty-three percent impairment | 745 <u>1040</u> weeks |
| For eighty-four percent impairment | 760 <u>1065</u> weeks |
| For eighty-five percent impairment | 775 <u>1090</u> weeks |
| For eighty-six percent impairment | 790 <u>1115</u> weeks |
| For eighty-seven percent impairment | 805 <u>1140</u> weeks |
| For eighty-eight percent impairment | 820 <u>1165</u> weeks |
| For eighty-nine percent impairment | 835 <u>1190</u> weeks |
| For ninety to one hundred percent impairment | 4000 <u>1215</u> weeks |
| <u>For ninety-one percent impairment</u> | <u>1240</u> weeks |
| <u>For ninety-two percent impairment</u> | <u>1265</u> weeks |
| <u>For ninety-three percent impairment</u> | <u>1290</u> weeks |
| <u>For ninety-four percent impairment</u> | <u>1320</u> weeks |
| <u>For ninety-five percent impairment</u> | <u>1350</u> weeks |
| <u>For ninety-six percent impairment</u> | <u>1380</u> weeks |
| <u>For ninety-seven percent impairment</u> | <u>1410</u> weeks |
| <u>For ninety-eight percent impairment</u> | <u>1440</u> weeks |
| <u>For ninety-nine percent impairment</u> | <u>1470</u> weeks |
| <u>For one hundred percent impairment</u> | <u>1500</u> weeks |

46. 11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined by the American medical association's "Guides to the Evaluation of Permanent Impairment" to result in a whole body impairment of less than sixteen percent is payable as a sixteen percent impairment.
47. 12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment ~~is disputed~~, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish a ~~comprehensive list~~ lists of doctors who are ~~medical specialists within the state~~ qualified by their training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor or

doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.

- 48: 13. ~~The bureau shall establish, by rule, a reasonable hourly rate and a maximum fee to compensate an employee's attorney for legal services rendered as a result of the award or denial of compensation for permanent impairment. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.~~
- 49: 14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

SECTION 3. PERMANENT IMPAIRMENT AWARDS STUDY. During the 1999-2000 interim, the bureau shall study the awards provided to injured employees with permanent impairments caused by compensable work injuries. The study must include involvement from labor, employers, medical providers, and organizations representing those constituencies, and must identify the advantages and disadvantages of the current system and of any proposed alternate system. The study must include recommendations on whether changes are needed, including changes to the threshold for qualifying for an award, and the cost of any proposed changes. Before the 2001 legislative session, the bureau shall report the results of the study to an interim committee identified by the legislative council.

SECTION 4. EFFECTIVE DATE. Sections 1 and 2 of this Act apply to all impairment evaluations performed after July 31, 1999, regardless of the date of injury or date of claim filing.

Approved April 15, 1999
Filed April 15, 1999

CHAPTER 552

SENATE BILL NO. 2272

(Senators Klein, Krebsbach)
(Representatives Berg, Poolman)

STAFFING SERVICE IMMUNITY

AN ACT to amend and reenact section 65-01-08 of the North Dakota Century Code, relating to workers' compensation employer and staffing service relief from liability for injuries to an employee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-08 of the North Dakota Century Code is amended and reenacted as follows:

65-01-08. Contributing employer or staffing service relieved from liability for injury to employee.

1. ~~Where~~ If a local or out-of-state employer ~~has~~ secured the payment of compensation to that employer's employees by contributing premiums to the fund, the employee, and the parents in the case of a minor employee, or the representatives or beneficiaries of either, do not have ~~ne~~ a claim for relief against ~~such~~ the contributing employer or against any agent, servant, or other employee of ~~such~~ the employer for damages for personal injuries, but shall look solely to the fund for compensation.
2. If a client company contracts with a staffing service for an employee's services, the client company and the staffing service are immune from any claim for relief by that employee or by another employee of the client company or staffing service, to the same extent granted under this title to contributing employers if the client company or staffing service secured the payment of compensation in accordance with this title. The employee is considered an employee of the client company and staffing service for purposes of application of immunity for injuries incurred by or caused by that employee.
3. For purposes of this section:
 - a. "Client company" means a person that contracts to receive services within the course of that person's usual business from an employee of a staffing service.
 - b. "Staffing service" means an employer in the business of providing the employer's employees to persons to perform services within the course of that person's usual businesses.

4. The bureau may adopt rules consistent with this section which further define client company and staffing service and which provide a procedure by which the bureau may determine whether an entity meets these definitions.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 553**HOUSE BILL NO. 1325**

(Representatives Poolman, Berg, Martinson, Porter)
(Senators Klein, Krebsbach)

**BUREAU DECISIONS, ASSISTANCE PROGRAM, AND
AUDIT**

AN ACT to create and enact a new subsection to section 65-01-16 of the North Dakota Century Code, relating to disputed decisions of the workers compensation bureau; to amend and reenact subsections 6 and 7 of section 65-01-16, sections 65-02-06.1, 65-02-27, and 65-02-30 of the North Dakota Century Code, relating to the workers' assistance program and to the independent audit of the workers compensation bureau; to amend and reenact section 65-02-23 of the North Dakota Century Code as amended by section 3 of House Bill No. 1331 and the new section to chapter 65-03 of the North Dakota Century Code as created by section 2 of House Bill No. 1296, as approved by the fifty-sixth legislative assembly; to repeal section 65-02-29 of the North Dakota Century Code, section 3 of chapter 612 of the 1995 Session Laws, section 7 of chapter 532 of the 1997 Session Laws, and section 8 of chapter 542 of the 1997 Session Laws, relating to the independent audit of the workers compensation bureau, disputed decisions of the workers compensation bureau, the expiration date of the workers' adviser program, and the expiration date of the preacceptance disability benefits provisions; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 6 and 7 of section 65-01-16 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the ~~workers' adviser program~~ office of independent review under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the ~~workers' adviser program~~ office of independent review mails its notice that the ~~program's office's~~ assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

SECTION 2. A new subsection to section 65-01-16 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.

SECTION 3. AMENDMENT. Section 65-02-06.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-06.1. Allocated loss adjustment expenses - Continuing appropriation - Annual review. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of all allocated loss adjustment expenses experienced by the bureau in its administration of this title. In its annual audit and its biennial report, the bureau shall include a breakdown of those allocated loss adjustment expenses that reflect the attorney fees and costs paid to attorneys who represent injured workers, the attorney fees and costs paid to attorneys with whom it contracts to represent the bureau, the amount paid for administrative law judges for hearings, and the court reporter and other legal expenses paid. ~~The performance audit required under section 65-02-29 must include a review of the bureau's legal costs to determine whether the system is operating efficiently.~~

³⁶⁸ **SECTION 4. AMENDMENT.** If House Bill No. 1331 becomes effective, section 65-02-23 of the North Dakota Century Code, as amended by section 3 of House Bill No. 1331, is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit - Continuing appropriation. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section 65-04-14 or 65-05-33. The unit shall refer cases of fraud to the bureau for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

³⁶⁹ **SECTION 5. AMENDMENT.** Section 65-02-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-27. ~~(Effective until July 31, 1999) Workers' adviser program~~ Office of independent review. ~~A workers' adviser program~~ The bureau's office of independent review is established. ~~The program office of independent review~~ is independent of the claims department of the workers compensation bureau and activities administered through the program office must be administered in accordance with this title. The program office of independent review must provide assistance to an injured employee a worker who has filed a claim, including which may include acting on behalf of an injured employee a worker who is aggrieved by a decision of the bureau, communicating with bureau staff regarding claim dispute resolution, and advising an injured employee informing a worker of the effect of decisions made by the bureau, the employee worker, or an employer under this title. The office of

³⁶⁸ Section 65-02-23 was also amended by section 3 of House Bill No. 1331, chapter 549.

³⁶⁹ Section 65-02-27 was also amended by section 9 of House Bill No. 1325, chapter 553.

independent review shall provide assistance to workers, upon request, in cases of constructive denial or after a vocational consultant's report has been issued. The bureau shall employ a director of the program, support staff for the program, office of independent review and other personnel determined to be necessary for the administration of the program office. Personnel A person employed to administer the program office of independent review may not act as an attorney for an injured employee a worker. The bureau may not pay attorney fees to an attorney who represents an injured employee a worker in a disputed claim before the bureau unless the injured employee worker has first attempted to resolve the dispute through the workers' adviser program office of independent review. A written request for assistance by an injured employee a worker who contacts the program office of independent review within the period for requesting a hearing on an administrative order tolls the time period for requesting a hearing on that order. The period begins upon notice to the employee worker, sent by regular mail, that the program's office of independent review's assistance to the employee worker is completed. The information contained in a file established by the workers' adviser program office of independent review on an injured employee's a worker's disputed claim, including communications from a worker, is not subject to discovery and may not be used as evidence in subsequent proceedings relative to that dispute privileged and may not be released without the worker's permission. Information in the file containing the notes or mental impressions of office of independent review staff is confidential and may not be released by the office of independent review.

SECTION 6. AMENDMENT. Section 65-02-30 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent ~~audit~~ performance evaluation - Bureau development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select an audit a firm with extensive expertise in workers' compensation practices and standards to complete a performance audit evaluation of the functions and operations of the bureau during that biennium. This may not be construed to require the firm to be a certified public accounting firm. The audit evaluation must evaluate the departments of the bureau to determine whether the bureau is providing quality service in an efficient and cost-effective manner. The firm also shall conduct a performance audit evaluation of the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws. The audit firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and ~~the auditor~~ a representative of the firm shall present the audit evaluation report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the audit performance evaluation. The director shall provide a copy of the audit performance evaluation report to the state auditor. The bureau shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent audit performance evaluation performed under this section. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

³⁷⁰ **SECTION 7. AMENDMENT.** If House Bill No. 1296 becomes effective, the new section to chapter 65-03 of the North Dakota Century Code, as created by section 2 of House Bill No. 1296, is amended and reenacted as follows:

Safety programs. The bureau shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. The biennial independent performance ~~audit~~ evaluation of the bureau must evaluate and report on the effectiveness of these programs.

SECTION 8. REPEAL. Section 65-02-29 of the 1997 Supplement to the North Dakota Century Code is repealed.

³⁷¹ **SECTION 9. REPEAL.** Section 3 of chapter 612 of the 1995 Session Laws is repealed.

SECTION 10. REPEAL. Section 7 of chapter 532 of the 1997 Session Laws of North Dakota is repealed.

SECTION 11. REPEAL. Section 8 of chapter 542 of the 1997 Session Laws is repealed.

SECTION 12. APPROPRIATION. There is hereby appropriated out of the workers compensation fund the sum of \$440,000, or so much thereof as may be necessary, to the workers compensation bureau for the purpose of defraying the costs of the office of independent review established under section 65-02-27, for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved April 14, 1999
Filed April 15, 1999

³⁷⁰ Section 65-03-04 was created by section 2 of House Bill No. 1296, chapter 555.

³⁷¹ Section 65-02-27 was also amended by section 5 of House Bill No. 1325, chapter 553.

CHAPTER 554

HOUSE BILL NO. 1333

(Representatives Keiser, Berg)

MEDICAL AND HOSPITAL FEE SCHEDULES AND MANAGED CARE

AN ACT to amend and reenact sections 65-02-08, 65-02-20, and 65-02-21 of the North Dakota Century Code, relating to workers' compensation medical and hospital fee schedules and workers' compensation managed care; and to repeal sections 65-02-19 and 65-05-07.1 of the North Dakota Century Code, relating to workers' compensation medical and hospital fee schedules and workers' compensation managed care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the 1997 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 rules necessary to carry out this title. All fees on claims for ~~legal,~~ medical, and hospital goods and services rendered provided under this title to an injured employee must be in accordance with schedules of fees 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.~~ Before the effective date of any adoption of, or change to, a fee schedule, the bureau shall hold a public hearing, which is not subject to chapter 28-32. The bureau shall establish, by administrative rule, costs payable, maximum costs, a reasonable maximum hourly rate, and a maximum fee to compensate an injured employee's attorney for legal services following issuance of an administrative order reducing or denying benefits. The bureau shall issue a decision within 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. The bureau shall pay an injured employee's attorney's fees and costs from the bureau general fund. Except for an initial determination of compensability, an attorney's fee may not exceed twenty percent of the amount awarded, subject to a maximum fee set by administrative rule. The bureau shall pay an attorney's fees and costs when:

1. The employee has prevailed in binding dispute resolution under section 65-02-20.
2. The employee has prevailed after an administrative hearing under chapter 28-32.

An injured employee has prevailed only when an additional benefit, previously denied, is paid. An injured employee does not prevail on a remand for further action or proceedings unless that employee ultimately receives an additional benefit as a result of the remand. This section does not prevent an injured employee or an employer from hiring or paying an attorney; however, the employee's attorney may

not seek or obtain costs or attorney's fees from both the bureau and the employee relative to the same claim. All disputes relating to payment or denial of an attorney's fee or costs must be submitted to the hearing officer or arbitrator for decision, but a hearing officer or arbitrator may not order that the maximum fee be exceeded.

SECTION 2. AMENDMENT. Section 65-02-20 of the 1997 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, including utilization review and bill review,~~ 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 in a cost-effective manner~~ upon a finding by the bureau that the employee suffered a compensable injury. ~~The managed care administrator program 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 and shall assist the bureau in the provide for medical management of claims within the bounds of workers' compensation law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider, except to the specific health care provider, bureau employees, or persons rendering assistance to the bureau in the administration of this title.~~ If an employee, employer, or medical provider disputes ~~the recommendation of the a managed care administrator decision,~~ the employee, employer, or medical provider ~~may shall~~ request binding dispute resolution on the ~~recommendation decision.~~ 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 65-01-16 or 65-02-15. 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 in~~ the dispute resolution ~~panel process.~~ 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 3. AMENDMENT. Section 65-02-21 of the North Dakota Century Code is amended and reenacted as follows:

65-02-21. Contract for administration of managed care program. The bureau ~~shall may~~ contract for the services of a third-party administrator to implement ~~the a~~ managed care program: ~~The bureau shall solicit by soliciting bids for these administrative services: The solicitation must include including a description of the program and the services expected of the managed care administrator.~~ 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 contract must be for the period of a biennium. 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 4. REPEAL. Sections 65-02-19 and 65-05-07.1 of the North Dakota Century Code are repealed.

Approved March 17, 1999

Filed March 17, 1999

CHAPTER 555

HOUSE BILL NO. 1296

(Representatives Carlson, Boucher, Berg)
(Senators G. Nelson, Solberg)

WORKPLACE SAFETY AND PREMIUM CALCULATION PROGRAMS

AN ACT to create and enact a new section to chapter 65-03 and a new section to chapter 65-04 of the North Dakota Century Code, relating to protecting the health of employees through workplace safety programs and to workers' compensation premium calculation programs; to amend and reenact sections 65-02-13.1 and 65-04-17.1 of the North Dakota Century Code, relating to expenditures by the workers compensation bureau for extraterritorial coverage and other states' insurance and to retrospective rating; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-13.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-13.1. Expenditures by bureau for reinsurance and extraterritorial coverage and other states' insurance - ~~Report to budget section in annual financial audit.~~ There is appropriated out of the workers' compensation fund, as a continuing appropriation, an amount necessary to allow the bureau to establish a program of reinsurance and a program of extraterritorial coverage and other states' insurance. The bureau may execute a contract for reinsurance ~~which is~~ and a contract for extraterritorial coverage and other states' insurance binding on the bureau and the ~~reinsurer~~ contracting party. The term identified in the contract may extend past the end of the biennium in which ~~the~~ a contract under this section is executed. The independent annual financial audit report on the bureau shall report to the legislative council's budget section annually on any contract negotiated between the bureau and an insurer for reinsurance executed pursuant to this section.

³⁷² **SECTION 2.** A new section to chapter 65-03 of the North Dakota Century Code is created and enacted as follows:

Safety programs. The bureau shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. The biennial independent performance audit of the bureau must evaluate and report on the effectiveness of these programs.

SECTION 3. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

³⁷² Section 65-03-04 was amended by section 7 of House Bill No. 1325, chapter 553.

Premium calculation programs - Authority. Upon approval of its board of directors, the bureau may create and implement by emergency rulemaking actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs under this section may be created or modified by emergency rulemaking and must include requirements or incentives for the early reporting of injuries.

SECTION 4. AMENDMENT. Section 65-04-17.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-17.1. Retrospective rating pilot program. The bureau may establish a ~~pilot~~ program to provide retrospective rating ~~to an employer whose annual workers' compensation premium is two hundred fifty thousand dollars or more.~~ The bureau may not require an employer to participate in the program, but it may refuse to allow an employer to participate when it determines that refusal is appropriate. The bureau shall establish formulas, based on sound actuarial principles, for premium calculation under the program. Sections 65-04-01, 65-04-04, and 65-04-04.2 do not apply to retrospective premiums allowed under this section. Any moneys held by the bureau for future claim payments must accrue interest at a reasonable rate as determined by the bureau. The bureau may execute a contract with an employer to establish a retrospective rating plan for that employer. The contract is binding on the employer and the bureau for the term identified in the contract. The term identified in the contract may extend past the end of the biennium in which the contract is executed but the term may not exceed ten years. ~~The bureau may not enter any contract under this section after June 30, 1999.~~ The bureau shall determine the amount of the deposit premium to be paid by an employer participating in the program. The amount of the deposit premium must be based on current rates, payroll, and experience rate factors. The bureau shall establish the maximum premium liability of a participating employer. The maximum premium is not subject to the limitations of section 65-04-17. The bureau may provide refunds from the workers' compensation fund when it is determined appropriate under the retrospective rating formula established. The bureau shall provide any refund due within thirty days after the date of the retrospective premium valuation. The bureau may impose a penalty if an employer fails to pay additional premium due within thirty days after the retrospective premium valuation. The bureau may require an employer to provide a bond, letter of credit, or other security approved by the bureau to guarantee payment of future employer obligations incurred by a retrospective rating plan. The bureau may charge an employer participating in the program a nonrefundable surcharge for the purpose of assisting retirement of any unfunded liability of the fund.

SECTION 5. APPROPRIATION. There is hereby appropriated out of the workers' compensation fund the sum of \$1,856,603 to the bureau for the purpose of defraying the expenses of operating workplace safety and loss prevention programs, for the biennium beginning July 1, 1999, and ending June 30, 2001. The bureau may employ no more than seven additional full-time equivalent positions for the workplace safety and loss prevention programs and may contract for the provision of risk management services.

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

Approved March 17, 1999
Filed March 17, 1999

CHAPTER 556

SENATE BILL NO. 2214

(Senators Krebsbach, Klein, Kinnoin)
(Representatives Boucher, Poolman)

WORKERS' COMPENSATION BENEFITS

AN ACT to amend and reenact subsection 3 of section 65-05-08 and sections 65-05-09, 65-05-10, and 65-05.2-01 of the North Dakota Century Code, relating to maximum wage-loss benefits payable by the workers compensation bureau and the waiting period for supplementary workers compensation benefits; to provide for a study of long-term benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 65-05-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the bureau any disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits payable, under section 65-05-29. If the employee willfully ~~failed~~ fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau periodically shall ~~periodically~~ provide a form to all injured employees receiving disability or rehabilitation benefits ~~that~~ which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.

SECTION 2. AMENDMENT. Section 65-05-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit

equal to sixty-six and two-thirds percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a maximum of one hundred ten percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the bureau benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of twelve consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The bureau benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the bureau to help defray the cost of the nursing home care.

SECTION 3. AMENDMENT. Section 65-05-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly benefit. If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. However, the partial disability benefits ~~plus dependency allowance and earning capacity~~ may not exceed ~~the weekly wage of the employee after deductions for social security and federal and state income tax~~ benefit rates as defined in section 65-05-09.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
2. 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 on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may

be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 4. AMENDMENT. Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

65-05.2-01. Eligibility for supplementary benefits. A workers' compensation claimant who is receiving permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of ~~ten~~ seven consecutive years ~~or more as of June thirtieth of each year~~ is eligible for supplementary benefits. Eligibility for supplementary benefits ~~starts on July first of each year and lasts for~~ as long as the claimant is entitled to permanent total disability benefits or death benefits.

SECTION 5. LONG-TERM BENEFITS STUDY. During the 1999-2000 interim, the bureau shall study the benefits available to persons receiving long-term disability or death benefits from the bureau. The study must identify the advantages and disadvantages of the current system, including the current system of supplementary benefits, and of any proposed alternate system. The study must include recommendations on whether changes are needed and the costs of any proposed changes. Before the 2001 legislative session, the bureau shall report to an interim committee identified by the legislative council on the results of the study.

SECTION 6. EFFECTIVE DATE. Sections 2 and 3 and the reduction in the waiting period in section 4 of this Act are effective for all claims for injuries occurring after July 31, 1999. The remainder of section 4 of this Act is effective August 1, 1999, for all claims regardless of the date of injury.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 557

HOUSE BILL NO. 1283

(Representatives Carlson, Boucher, Poolman)
(Senators Kinnoin, Krebsbach, G. Nelson)

WORKERS' COMPENSATION DEATH BENEFITS

AN ACT to amend and reenact sections 65-05-17, 65-05-20.1, 65-05-26, and 65-05.2-02 of the North Dakota Century Code, relating to increasing workers' compensation death benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-17 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified; ~~a weekly compensation:~~

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to ~~sixty-six and two-thirds percent of the weekly wage of the decedent, not to exceed the state's average weekly wage in effect at the time of the death~~ the benefit rate for total disability under section 65-05-09. These benefits continue until the death or remarriage of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of "child" in this title. If there is more than one guardian for the children who survive the decedent, the bureau shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. ~~Total weekly death benefits paid may not be less than sixty percent of the maximum weekly death benefits payable.~~ Total death benefits, including supplementary benefits, paid on any one claim may not exceed one hundred ninety-seven thousand dollars. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee.
2. To each child of the deceased employee, the amount of ten dollars per week. This rate must be paid to each eligible child regardless of the date of death. The bureau may pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation.
3. In addition to the payments provided under subsections 1 and 2, ~~the bureau shall make~~ a payment in the sum of ~~six~~ twelve hundred dollars to the decedent's spouse or the guardian of the children of the decedent and ~~two~~ four hundred dollars for each dependent child. Where there is more than one guardian of the decedent's surviving children, the ~~six~~ twelve hundred dollars must be divided equally among the children and paid to the children's guardians.

SECTION 2. AMENDMENT. Section 65-05-20.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. (Effective through July 31, 2001) Scholarship fund - Rules. The bureau may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. The bureau may also grant scholarships to injured workers for whom the bureau determines a scholarship would be beneficial and appropriate because of exceptional circumstances as determined by the bureau. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed one hundred fifty thousand dollars. The maximum amount payable on behalf of an applicant is ~~one~~ three thousand ~~five~~ hundred dollars per year for no more than five years. Scholarships must be awarded by a panel chosen by the bureau. The bureau shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

SECTION 3. AMENDMENT. Section 65-05-26 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-26. Burial expenses. If death benefits are payable under section 65-05-16, the fund shall pay to the facility handling the funeral arrangements of the deceased employee burial expenses not to exceed ~~five~~ six thousand ~~five~~ hundred dollars.

SECTION 4. AMENDMENT. Section 65-05.2-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount. A claimant who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 5. EFFECTIVE DATE. Eligibility for the increased benefit rate pursuant to the changes in subsection 1 of section 1 and in section 4 of this Act is prospective only, beginning with the effective date of this Act. Injured workers receiving benefits under subsection 1 of section 65-05-17 and also receiving supplementary benefits under section 65-05.2-02 are not eligible for the increased benefit rate provided in subsection 1 of section 1.

Approved March 16, 1999
Filed March 16, 1999

VETOED MEASURES

CHAPTER 558

HOUSE BILL NO. 1330

(Representatives Keiser, Berg, Carlson, Wald)

WORKERS COMPENSATION BUREAU DECISIONS AND JURISDICTION

AN ACT to amend and reenact sections 65-01-16 and 65-05-04 of the North Dakota Century Code, relating to workers compensation bureau decisions, disputed decisions, and continuing jurisdiction; to repeal section 7 of chapter 532 of the 1997 Session Laws, relating to the effective date of chapter 532 of the 1997 Session Laws; and to provide an effective date.

VETO

March 12, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning to you House Bill 1330, and respectfully veto the same, in order to do what is best for the employers and employees of our State. HB 1330 allows the North Dakota Worker's Compensation Bureau to re-open any decision based upon new information. This is a public policy with which I do not agree for the following reasons:

First, I believe it will invite litigation to interpret the bill, and litigation to challenge the bill's effect upon North Dakota's employees, a result that neither the Bureau, nor citizens of North Dakota want.

Secondly, the bill allows the right to re-open a case, only to the Bureau. It does not afford the employee the same right to re-open a case upon "new information." I believe that is fundamentally unfair.

Third, the bill is in direct response to a Supreme Court decision, Cridland v. NDWCB, 1997, ND 223, 571 N.W.2d 351, which says that Bureau decisions should be final, and it should not be allowed to re-litigate issues it has had an opportunity to litigate. In the Cridland case, the employee applied for and received North Dakota Workers Compensation benefits following a formal hearing. Subsequently, the Bureau chose to re-open the case and seek reimbursement of \$24,000 in benefits. The Supreme Court rejected the Bureau's claim. Its decision is well reasoned and reasonable. It allows the Bureau to continue its current practices, but confirmed that the Bureau does not get more than "one bite at the apple."

The bill's language is unclear. Section 2 provides that the Bureau may re-open a case "on the basis of new information." But, it provides no standards by which to guide decisions for review. In other areas of the law, litigants are allowed only to revisit a case upon "new information" if they show that it was not discoverable at the time of trial even with the exercise of reasonable diligence. We should hold North Dakota Workers Compensation to a similar standard.

The bill also does not provide finality for the parties. Every litigant, every employer, and employee deserves to have confidence in the decisions made by the Bureau, that those decisions are final. This bill does not afford that finality, but in fact opens cases for review upon standards that are undefined. It risks the limited resources of the employer, the employee, the Bureau, the Office of Administrative Hearings, and the Court, to have issues relitigated repeatedly. We should not endorse bills that provide more litigation and less certainty in Bureau claims.

Finally, the bill erodes the rights of North Dakota workers and their employers to have work related injuries handled in a judicious, prompt manner that affords the employee sure and certain relief for work related injuries. In considering this bill, I am reminded of our Supreme Court's admonition in Baldock v. NDWCB, that continued erosion of workers compensation benefits may reach a point where the fairness of the system no longer supports the underlying bargain of employer immunity.

I have reviewed carefully the testimony of proponents and opponents of the bill. I am convinced that it does not provide wise public policy for our employers and their employees. For these reasons, I respectfully veto the bill.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-16. Decisions by bureau - Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The bureau shall send a copy of each initial claim form filed with the bureau to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The bureau may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of record.
3. The bureau may issue a notice of decision for any decision made by informal internal review and shall ~~serve~~ send the notice of decision ~~on~~ to the parties by regular mail. A notice of decision must include a

statement of the decision, a short summary of the reason for the decision, and notice of the right to reconsideration.

4. A party has thirty days from the day the notice of decision was mailed by the bureau in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the bureau shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The bureau may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the workers' adviser program under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the workers' adviser program mails its notice that the program's assistance is complete, in which to file a written request for rehearing. The request must specifically state ~~each the~~ alleged errors in the decision and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.
9. ~~Within sixty~~ Absent good cause, within thirty days after receiving the recommended findings, conclusions, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
10. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10 but may not request reconsideration of the order by the bureau.
11. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.

12. This section applies to all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.

SECTION 2. AMENDMENT. Section 65-05-04 of the North Dakota Century Code is amended and reenacted as follows:

65-05-04. Bureau has continuing jurisdiction over claims properly filed. If the original claim for compensation has been made within the time specified in section 65-05-01, the bureau at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, modify, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation, except that the bureau may not reopen an issue that was noticed for, heard in, and specifically decided as a result of a formal hearing under subsection 8 of section 65-01-16 except on the basis of new information. There is no appeal from a bureau decision not to reopen a ~~claim~~ previous decision after the bureau's ~~order on the claim~~ previous decision has become final.

SECTION 3. REPEAL. Section 7 of chapter 532 of the 1997 Session Laws of North Dakota is repealed.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act applies to all claims regardless of the date of the injury.

Disapproved March 12, 1999
Filed April 14, 1999

CHAPTER 559**SENATE BILL NO. 2425**

(Senator Krauter)
(Representative Nicholas)

LIVESTOCK PRODUCTION LOAN PROGRAM

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the establishment of a livestock production loan program and the issuance of revenue bonds or other evidences of indebtedness by the industrial commission of North Dakota.

VETO

April 5, 1999

The Honorable Rosemarie Myrdal
President of the Senate
Senate Chamber
State Capitol
Bismarck, ND 58505

Dear President Myrdal:

Attached please find Senate Bill 2425, which I am returning to the Senate and hereby veto.

This legislation attempts to supplant financing available in the private sector through government bonding. It does so in an unfocused fashion that, in any event, appears unworkable.

Based on consultations with bond counsel, it appears the proposed bonds are neither saleable nor tax-exempt. First, they will not find buyers since the full faith and credit of North Dakota is not behind them. These are solely revenue bonds. Investors will be looking for collateral and standing similar as a commercial bank, yet facing additional administrative costs involved with the government bonding.

Second, the bonds will be used to finance private activity and are therefore not tax exempt. Such an exemption is usually a major attraction for investors.

Given these circumstances, any financial problems facing the venture would compel the Industrial Commission to repurchase the bonds. The repurchasing option is an unwise provision in this legislation that would further increase the state's exposure.

In many respects, this bill is reminiscent of the legislation that established the Real Estate Trust Fund in the 1980s. You will recall that the Bank of North Dakota had to write off nearly \$24 million last session stemming from that fund.

It is not ordinarily the practice nor purpose of the Bank of North Dakota to be primary financiers of any non-public venture. The state can and does provide financial assistance, but only with participation of the private sector. No such private involvement is included in this legislation.

The primary problem facing agriculture today is profitability. This legislation does nothing in a significant manner to address profitability, and instead offers false hopes to farmers and ranchers through an agent of the 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. A new chapter to title 4 of the North Dakota Century Code is created and enacted as follows:

Declaration of intent. It is hereby found and declared that:

1. The high costs of financing associated with livestock production make it difficult for livestock producers to continue existing livestock production operations and facilities, and also make it difficult to establish a livestock production operation or facility.
2. The high costs of access to capital for livestock production are a contributing factor in the continuing decline in the number of family farms in the state and the opportunity for employment in rural areas.
3. As a result of these conditions, the state is experiencing structural economic weaknesses which can be alleviated, in part, through action by the state designed to provide affordable financing for new and existing livestock production operations and facilities.
4. The encouragement and promotion of livestock production through a loan program as established by this chapter is a public purpose for which the use of public funds provided through the issuance and sale of bonds is a proper governmental function which can best be accomplished by the industrial commission.

Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Bonds" means revenue bonds or other evidences of indebtedness issued by the commission under this chapter.
3. "Commission" means the industrial commission of North Dakota.
4. "Cooperative" means an association incorporated under chapter 10-15, and an association incorporated under the laws of South Dakota which has members residing within this state.
5. "Livestock producer" means an individual or cooperative organized for the purpose of livestock production.

6. "Livestock production" means the business of acquiring, raising, and processing livestock, including real and personal property necessary for all activities related to such production.

Powers. The commission is granted all powers necessary to carry out the purpose and intent of this chapter, including the power to:

1. Enter into contracts or other instruments or agreements necessary or incidental for the performance of its duties and functions under this chapter, including contracts, instruments, or agreements with any department, agency, or instrumentality of the United States of America or this state.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided in this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in such securities as the commission determines to be prudent, subject to any agreements with the holders of the commission's bonds.
5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds, including the payment of premiums or other fees, from any public or private entity.
6. Make loans to livestock producers through the loan program established under this chapter and charge any reasonable fees to such borrowers as the commission may determine to be appropriate.
7. Prescribe and approve the forms and procedures for applications by livestock producers for loans to be made under this chapter.
8. Prescribe the terms and other conditions of loans to be made to a livestock producer under this chapter.
9. Consent to any modification, amendment, or other revision with respect to the terms and provisions of its bonds, or of any other contract, instrument, or other agreement to which the commission is a party, subject to any agreements with the holders of the commission's bonds.
10. Purchase bonds issued under this chapter out of any funds available to the commission for such purpose and not pledged to or necessary for some other purpose, and hold, cancel, or sell such bonds, subject to any agreements with its bondholders.

Bank of North Dakota. The commission may delegate to the Bank, and the Bank is authorized to exercise, all administrative powers granted to the commission under this chapter, including processing and reviewing applications for, and closing and servicing loans made to, livestock producers. The Bank may not issue a letter of credit for bonds issued under this Act.

Issuance and sale of bonds - Use of bond proceeds. The commission has the authority to issue its bonds in such principal amounts as the commission determines is necessary to provide sufficient funds to carry out its duties and functions under

this chapter. The proceeds must be used solely to make loans, pay costs of issuance of the bonds, pay accrued or capitalized interest or capitalized principal, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the commission and must bear such date, mature at such times, bear interest at such rates, be in such denominations, be payable from such sources, and be subject to such terms of redemption as may be provided by such resolution. The bonds may be sold by the commission at public or private sale at such times and at such prices as may be agreed to by the commission. The commission may provide for the refunding or refinancing of the bonds from time to time.

Agreement with bondholders. Any resolution of the commission authorizing the issuance of bonds under this chapter may contain provisions or covenants, which will be a contract or agreement with the bondholders, as to:

1. The setting aside of reserves or sinking funds.
2. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
3. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to such amendment or abrogation, and the manner in which the consent may be given.
5. Vesting in a trustee such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee.
6. Defining the acts, or omissions to act, which constitute a default of the obligations and duties of the commission to the bondholders, and providing for the rights and remedies of the bondholders in the event of a default, provided that the rights and remedies must be consistent with the general laws of the state and other provisions of this chapter.
7. Any other matter, of like or different character, which in any way affects the security or protection of the bondholders.

Reserve fund. The commission must establish and maintain a reserve fund for bonds issued under this chapter. There must be deposited in the reserve fund:

1. All bond proceeds required to be deposited in the reserve fund by the terms of any contract between the commission and the bondholders or by the terms of any resolution of the commission concerning the use of bond proceeds.
2. Any moneys from any other source made available to the commission for deposit in the reserve fund.

Moneys in the reserve fund may be used only to make payments of the principal of and interest on bonds, including any premium required to be paid when bonds are

redeemed prior to maturity, and sinking fund installments as they become due and payable. Moneys in the reserve fund may only be withdrawn in conformity with the terms of any contract between the commission and the bondholders or any resolution of the commission concerning the use of bond proceeds.

Exemption from state and local taxes. All bonds issued under this chapter and the interest or other income payable to and received by bondholders are exempt from taxation by the state or any political subdivision of the state.

Payment of bonds. Bonds issued under the authority of this chapter by the commission are not obligations or debt of the state, and are payable solely from revenues or other funds available to the commission under this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission or the Bank other than the revenues and property pledged under this chapter. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or interest on the bond.

Legal investments. Bonds issued under the authority of this chapter by the commission are legal investments in which all public officers or public bodies of the state, its political subdivisions, and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

Validity. Bonds issued under the authority of this chapter must be executed by a member of the commission or by facsimile signature and the manual signature of an authenticating agent. Any bond bearing the signature of a member of the commission in office on the date of execution is valid and binding for all purposes for which it was issued. After issuance, all bonds issued under the authority of this chapter by the commission are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or entity is estopped from questioning their authorization, issuance, execution, sale, or delivery by the commission.

Disapproved April 5, 1999
Filed May 3, 1999

CHAPTER 560**HOUSE BILL NO. 1335**

(Representatives Nichols, Drovdal, Nelson, Nicholas)
(Senators Kroeplin, Wanzek)

**AGRICULTURAL PRODUCTS AND LIVESTOCK
CHEMICAL PRESENCE**

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to the presence of chemicals in agricultural products and livestock; to provide a penalty; and to provide an effective date.

VETO

April 12, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1335 to you, and hereby veto the same. The bill has a noble purpose at heart, namely to require producers of our trading partners to comply with the same standards with which North Dakota producers must comply. This is a goal I support and will aggressively pursue in the next two years. However, I cannot sign the bill for the following reasons:

1. The bill does not become effective until July 1, 2001. Consequently, it will have no positive legal effect upon the issues that it is designed to address.
2. However, it may have several negative and unintended consequences that cause me concern. These potential consequences will include the following:
 - a. First, the Canadian Government has indicated that even with the delayed effective date, it will pursue consultations with the United States Trade Representative, which may result in retaliation against North Dakota producers.
 - b. This will require North Dakota to expend resources in these consultations to defend a law that has no legal effect until July 1, 2001. We should not commit taxpayer dollars for such a purpose.
 - c. It may also affect our canola processing industry that relies upon canola from our neighbors to the North. Forty-five percent of canola crushed at Velva comes from Canada.

- d. Finally, the bill may jeopardize what progress is being made to address these issues between our national government and our trading partners. I do not support legislation that has no legal effect yet creates the potential for harming efforts to address these issues in other arenas.

House Bill 1335 has served to put on notice the governments of the United States and Canada that the issues raised by this bill are significant and real, requiring urgent resolution. If they are not resolved successfully and in a timely manner, legislative leaders and governors across the border states are likely to take up these issues again, to seek resolution on their own.

For these reasons, I have vetoed HB 1335 and respectfully return the bill with these objections for your consideration.

Sincerely,

Edward T. Schafer
Governor

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:

Agricultural products and livestock - Certified as chemical free - Penalty.

1. It is a class B misdemeanor for any person to transport any agricultural product or livestock into this state from another country or to pass through this state with an agricultural product from another country unless the product or livestock has a phytosanitary or sanitary certificate stating:
 - a. The agricultural product or livestock does not contain any chemical levels in excess of established maximum residue limits;
 - b. The agricultural product or livestock shows no trace of any chemical for which no maximum residue limit has been established; and
 - c. The agricultural product or livestock shows no trace of any chemical not approved for use on such agricultural product or livestock in this country.
2. For purposes of this section:
 - a. "Agricultural product" means crops, crop products, or plants, but does not include products for the sole consumption of the transporter or the transporter's family.
 - b. "Livestock" does not include products for the sole consumption of the transporter or the transporter's family.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

Disapproved April 12, 1999
Filed April 14, 1999

CHAPTER 561

HOUSE BILL NO. 1108

(Natural Resources Committee)

(At the request of the Tax Commissioner)

INTERNET SERVICE PROVIDER TAX

AN ACT to create and enact five new sections to chapter 57-34 of the North Dakota Century Code, relating to the audit and assessment of telecommunications carriers, deficiency notice, protest and appeal procedure, claim for credit or refund of the tax on telecommunications carriers, preservation of records, and resale certificates; to amend and reenact sections 57-34-01, 57-34-02, 57-34-03, 57-34-06, and 57-34-10 of the North Dakota Century Code, relating to definitions, identification of taxable resellers and pay telephone operators, elimination of tentative assessments, allocation of revenue, filing extensions, tax liabilities of less than five dollars, and interest and lien provisions; to provide for retroactive application; to provide an effective date; and to provide an expiration date.

VETO

April 15, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1108, and regretfully must veto the same. The bill has one provision contained in section 6, which I have made clear that I cannot support, namely the inclusion of Internet Service Providers (ISPs) for the payment of the gross receipts tax under chapter 57-34 of the North Dakota Century Code.

I simply cannot agree that this tax is wise or necessary public policy when we are spending millions to encourage the development of the Internet as a driving economic force in North Dakota's future. The Internet is becoming an essential tool for government efficiency, educational outreach and the provision of cost-effective services, especially in rural North Dakota. Our businesses will increasingly rely on the Internet to compete in the world economy.

More specifically, these are the reasons I cannot support imposing what I consider to be a new tax on a new class of taxpayers:

1. First, taxing access to the Internet is a policy decision that runs contrary to the best interests of our people. We are urging development and use of the Internet in the public and private sector. By raising costs, taxation discourages such development.

2. Second, the amount of revenue anticipated by taxing ISPs is not substantial, estimated at less than \$200,000 for the upcoming biennium. While the revenue is at best modest, the new tax could well hinder new investment in and growth of an Internet-related economy. Additionally, we will face legal challenges to the tax by national ISPs who contend the tax is illegal. Those costs could easily exceed any revenue we might hope to gain from HB 1108.
3. Third, the tax will result in unfair competition to North Dakota ISPs. Consider the Internet Service Provider in Fargo, Minot or Watford City who does not challenge the tax, but instead pays it. Those in-state providers will pay the tax, while their competitors from another jurisdiction will not, instead challenging the tax in court. We should not put good North Dakota entrepreneurs in such a competitive disadvantage.
4. I also believe the Internet tax provision of HB 1108 is either unnecessary or potentially illegal. Some argue that the ISP taxation is already in place as a result of the 1997 Legislature's passage of HB 1068, which restructured telecommunications taxation. If that is true, then including the ISPs in the bill now under consideration is unnecessary.

However, if ISPs were not included in the 1997 legislation -- which is my view -- then this bill is likely to be illegal under the Internet Tax Freedom Act, passed by Congress and made law on October 1, 1998. That federal law placed a three-year moratorium on taxing Internet access. A limited grandfather clause was granted for a number of states, including North Dakota, but only if the states can show that the tax has been "generally imposed and actually enforced." A sound argument exists that we may not be able to meet that standard.

5. Finally, and perhaps most importantly, I do not support this tax because it is indeed the imposition of a new tax upon a new sector of our economy.

For these reasons, I regretfully must return HB 1108 with my veto. I urge your careful consideration of these concerns, and ask that you vote to sustain this veto. I also recommend that you consider attaching the good and necessary provisions in this bill to the final Office of Management and Budget omnibus legislation to ensure their enactment into law.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Tax commissioner to audit returns and state board of equalization to assess tax. The tax commissioner shall proceed to audit the returns of telecommunications carriers not later than three years after the due date of the return, or three years after the return was filed, whichever period expires later. The state board of equalization shall assess the tax and, if any additional tax is found due, the tax commissioner shall notify the taxpayer in detail as to the reason for the increase.

SECTION 2. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Deficiency, protest, and appeal.

1. When tax is understated on a return because of a mathematical or clerical error, the tax commissioner shall notify the telecommunications carrier of the error and the amount of additional tax due. This notice is not a notice of deficiency and the telecommunications carrier has no right to protest.
2. If upon audit the tax commissioner finds additional tax due, the tax commissioner shall notify the telecommunications carrier and the state board of equalization of the deficiency in the tax amount. A notice of deficiency must be sent to the telecommunications carrier by first-class mail and must state the amount of additional tax due and set forth the reasons for the increase.
3. A telecommunications carrier has thirty days from the date of mailing of the notice of deficiency to file a written protest with the state board of equalization objecting to the assessment of additional tax due. The protest must set forth the basis for the protest and any other information that may be required by the state board of equalization. If a telecommunications carrier fails to file a written protest within the time provided, the amount of additional tax stated in the notice of deficiency becomes finally and irrevocably fixed. If a telecommunications carrier protests only a portion of the tax commissioner's finding, the portion that is not protested becomes finally and irrevocably fixed.
4. If a protest is filed, the state board of equalization shall reconsider the assessment of additional tax due.
5. Within six months after the protest is filed, the state board of equalization shall mail to the telecommunications carrier a notice of reconsideration and assessment which must respond to the telecommunications carrier's protest and assess the amount of any additional tax due. The amount set forth in that notice becomes finally and irrevocably fixed unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice of reconsideration and assessment.

SECTION 3. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Claims for credit or refund.

1. A telecommunications carrier 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 later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

SECTION 4. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Preservation of records. Every telecommunications carrier required to make a return and pay any tax under this chapter shall preserve records of the gross proceeds of sale as the commissioner may require and every carrier shall preserve for a period of three years and three months all invoices and other records of telecommunications services purchased for resale. All of these books, invoices, and other records must be open to examination at any time by the commissioner or any duly authorized agent of the commissioner.

SECTION 5. A new section to chapter 57-34 of the North Dakota Century Code is created and enacted as follows:

Resale certificates. A telecommunications carrier who receives a resale certificate certifying that another telecommunications carrier holds a North Dakota sales and use tax permit for sales or use tax purposes under section 57-39.2-14 is relieved from submitting the telecommunications gross receipts tax upon the sale of telecommunications services to be resold by the telecommunications carrier submitting the certificate. When a telecommunications carrier submits a false resale certificate to another telecommunications carrier, the telecommunications carrier that submitted the certificate is liable for the telecommunications gross receipts tax on the sale. A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests is not a telecommunications carrier under this section.

SECTION 6. AMENDMENT. Section 57-34-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-01. Definitions. The definitions in this section may not be construed to subject a telecommunications carrier or telecommunications service to the provisions of title 49. As used in this chapter, unless the context or subject matter otherwise clearly requires:

1. "Adjusted gross receipts" means telecommunications carrier gross receipts less all amounts paid by the reporting telecommunications

carrier on telecommunications service that is taxable under this chapter in state and local sales and use taxes and federal excise taxes and less amounts paid by the reporting telecommunications carrier to another telecommunications carrier for directory assistance originated by a caller in this state.

2. "Company" includes any individual, copartnership, business trust, corporation, limited liability company, joint-stock company, association, or any other organization.
2. 3. "Gross receipts" means all telecommunications carrier retail revenues from telecommunications service charges billed to any station in this state and from charges to another telecommunications carrier for directory assistance originated by a caller in this state.
3. 4. "Station" means a subscriber service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
4. 5. "Telecommunications carrier" means a ~~person~~ company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
5. 6. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state;
 - d. ~~A hospital, hotel, motel, or similar place of temporary accommodation selling telecommunications service to its patients or guests, if there is a separately stated charge for the service~~ Internet access service or similar service; and
 - e. Telegraph service.
6. 7. "Telecommunications service charges" means the value of all consideration received by a telecommunications carrier for provision of telecommunications service and recovery within the year of telecommunications service charges written off in a prior year as uncollectible. For a telecommunications carrier operating on any form of mutual basis, the term includes all amounts assessed against the members for the operation and maintenance of the business. The term does not include revenue from merchandising, jobbing and contract work, maintenance or repair of customer premises equipment including equipment leased or rented by the customer from any source, operations not directly related to provision of telecommunications service, amounts

charged for billing and collection on behalf of another telecommunications carrier, proceeds from transfer of capital stock, or transfer, sale, or lease of property not directly related to telecommunications service. The term does not include amounts collected for or amounts collected from federal and state mechanisms to preserve and advance universal service.

SECTION 7. AMENDMENT. Section 57-34-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-02. Reports of telecommunications carriers - Penalty.

1. Each telecommunications carrier that received intercarrier telecommunications revenue in the preceding calendar year shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address of each telecommunications carrier from which the reporting telecommunications carrier received intercarrier telecommunications revenue in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
2. Each telecommunications carrier that provided telecommunications service in the preceding calendar year to one or more pay telephones owned by another company shall make and file with the tax commissioner, on or before January fifteenth of each year, a list containing the name and mailing address for each company that owned a pay telephone served by the reporting telecommunications carrier in the preceding calendar year. This list is to be filed in addition to the report required by subsection 3.
3. Each telecommunications carrier subject to gross receipts taxes under this chapter shall make and file with the tax commissioner, on or before May first of each year, on the form as the tax commissioner may prescribe, a report containing a statement of its gross receipts in this state during the preceding calendar year, amounts paid by the carrier on telecommunications service that is taxable under this chapter during the preceding calendar year in state and local sales and use taxes and federal excise taxes, amounts received from or paid to another telecommunications carrier for directory assistance, and any other information as the tax commissioner may require. The form must include a notice of a telecommunications carrier's right to appeal its assessment to the state board of equalization prior to or at the August meeting of the state board of equalization. Each report must be signed, subject to section 12.1-11-02, by the president, secretary, or other official of the telecommunications carrier.

SECTION 8. AMENDMENT. Section 57-34-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-03. Computation of taxes by tax commissioner - Exemption for high-volume customers - Continuing appropriation.

1. On or before July fifteenth of each year, the tax commissioner shall review the report under subsection 3 of section 57-34-02 and compute the ~~tentative~~ total tax to be assessed against each telecommunications carrier in this state at a rate of two and one-half percent of adjusted

gross receipts. ~~The~~ If the tax commissioner's computation of the total tax differs from the amount computed by a telecommunications carrier, the tax commissioner shall give ten days' notice of the change by mail to each that telecommunications carrier of its tentative total tax under this section and of its right to contest the determination before the state board of equalization at its August meeting on or before July fifteenth. The state board of equalization shall assess the tax under this section after consideration of any contest presented.

2. A telecommunications carrier's retail customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before July first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax commissioner. Refunds under this subsection must be paid by the tax commissioner from tax collections under this chapter and are appropriated as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 9. AMENDMENT. Section 57-34-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-06. Duties of county treasurer. The county treasurer shall allocate taxes received under this chapter to the state, the county, and the various taxing districts within the county according to the proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and each currently existing taxing district in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by the state, the county, and all taxing districts in the county.

SECTION 10. AMENDMENT. Section 57-34-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-34-10. Penalties - Interest - Lien for tax.

1. If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information; ~~and.~~ If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report which must be collected as a part of the tax, but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed.
2. Taxes levied under this chapter are due and payable to the tax commissioner on January first following the year in which the taxes were assessed. ~~The unpaid principal balance of taxes on the following March first is subject to a penalty of three percent, on the following May first an additional penalty of three percent, on the following July first an~~

additional penalty of three percent, and on the following October fifteenth an additional penalty of three percent. Beginning January first of the year following the year the taxes became due, simple interest at the rate of twelve percent per annum applies to the unpaid principal balance until the taxes and penalties are paid. Interest penalties must be prorated to the nearest full month for a fractional year of delinquency. A remittance of tax need not be made and any assessment or collection of tax may not be made unless the amount is at least five dollars, including penalty and interest.

3. If any amount of tax imposed by this chapter is not paid on or before March first, or if upon audit an additional tax is found to be due, there must be added to the tax remaining due interest at the rate of one percent of the additional tax for each month or fraction of a month during which the tax remains unpaid, computed from March first to the date paid.
- ~~3.~~ 4. Taxes under this chapter constitute a first and paramount lien in favor of the state upon all property and rights to property of the taxpayer. The lien may be foreclosed in the same manner provided by law for mortgages on real or personal property. Whenever any taxpayer liable to pay a tax or penalty imposed refuses or neglects to pay the liability, the amount, including any interest, penalty, or addition to the tax, and the additional costs that may accrue are 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. The lien attaches at the time the tax becomes due and payable and continues until the liability for the amount is satisfied.
5. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the tax commissioner filing in the central indexing system maintained by the secretary of state a notice of the lien provided for in subsection 4, takes free of, or has priority over, the lien. The tax commissioner shall index in the central indexing system the following data:
 - a. The name of the taxpayer.
 - b. The tax identification number or social security number of the taxpayer.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. The tax commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.
6. Upon payment of the tax, and any accrued penalties and interest, as to which the tax commissioner has filed a notice of lien, the tax commissioner shall index a satisfaction of the lien in the central indexing system without fees or costs.

SECTION 11. RETROACTIVE APPLICATION OF ACT - EFFECTIVE DATE - EXPIRATION DATE. This Act applies retroactively to all tax years beginning after December 31, 1997. The amendments of subsections 1 and 3 of section 57-34-01 as amended by section 6 of this Act are effective for taxable years beginning after December 31, 1998. The amendments to subsections 1 and 2 of section 57-34-02 as amended by section 7 of this Act are effective for the first two taxable years beginning after December 31, 1999, and are thereafter ineffective.

Disapproved April 15, 1999

Filed April 17, 1999

CHAPTER 562**HOUSE BILL NO. 1443**

(Representatives Dorso, Byerly, Koppang)
(Senators Kringstad, Robinson, Traynor)

**WORK FORCE TRAINING INVESTMENT FEE LINE
ITEM**

VETO

March 22, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1266 regarding the purchase of a building by the North Dakota Workers Compensation Bureau (NDWCB) and hereby veto the same. The bill gives the NDWCB the authority to purchase a building under certain conditions and provides the authority until July 31, 2003.

The return on investment for the NDWCB has averaged 11.3% since 1993. This is about equal to the purported cost savings suggested by the Bureau in its financial analysis for buying a building. Real cost savings from this legislation appears to be minimal.

The bill is premised on the uncertain notion that it will save money that might be used for higher benefits or reduced premiums. Yet, the bill does not require any such purported savings to be passed on to the employees or the employers of this state.

Finally, I believe this legislation does not set good policy for the entire State of North Dakota. NDWCB is a state agency funded by taxes from North Dakota employers. We should make decisions regarding the Bureau based upon sound policy for the entire state. If we are to shift public policy toward buying buildings, then we should do so in a broad examination of the policy itself, not for just one agency or on an ad hoc basis. We should consult with our financial planners and the private sector, consider the impact to other agencies, potential cost savings, the impact to local property taxes and the affect upon local governments that such a policy may have.

For these reasons, I must respectfully veto HB 1266.

Sincerely,

Edward T. Schafer
Governor

Disapproved April 19, 1999
Filed April 19, 1999

NOTE: For the full text of House Bill No. 1443, including the vetoed sections, see chapter 439.

CHAPTER 563**SENATE BILL NO. 2307**

(Senators Krebsbach, Heitkamp, Kringstad)
(Representatives Clark, Dorso, Kroeber)

**911 FEES, FUND, DEFINITIONS, AND
COMMUNICATIONS**

AN ACT to create and enact sections 57-40.6-02.1, 57-40.6-02.2, and 57-40.6-10 of the North Dakota Century Code, relating to a wireless 911 service fee, service fund, and planning committee; to amend and reenact sections 57-40.6-01, 57-40.6-06, 57-40.6-07, and 57-40.6-08 of the North Dakota Century Code, relating to wireless 911 service fees, definitions, and communications; and to provide a continuing appropriation.

VETO MEASURE

April 20, 1999

The Honorable Alvin Jaeger
Secretary of State
600 East Boulevard, 1st Floor
Bismarck, ND 58505-0500

RE: Senate Bill 2307

Dear Secretary Jaeger:

I am sending to you Senate Bill 2307, and hereby veto the same. The bill imposes a 40 cent tax per month on cell phones in the state for the purposes of defraying the costs of 911 service and to enhance 911 capability. I cannot support the bill for the following reasons:

1. First, the bill imposes a new tax generating nearly \$2 million from North Dakota cell phone users.
2. The bill creates a planning committee but does not include taxpayers, emergency medical service representatives, or law enforcement personnel. The committee is charged with developing legislation to implement a statewide plan for enhanced 911 service that would not be considered until the 2003 legislative session. I believe both the make-up of the committee and its charge fall short in providing sound guidance and implementation for our state's 911 system.
3. I do not support imposing such a broad tax on users, who are probably already paying a 911 tax on their land-lines, without considering a commensurate reduction in land-line taxes.
4. Finally, the bill imposes this tax, purportedly to provide enhanced 911 (E-911) service, but falls short of its goal. It allocates 25 cents to the counties, but allows the funds to be used for maintaining existing 911 service without moving toward an enhanced system.

The bill requires the balance of the fund to be held in escrow until the counties certify that they have begun to implement phase I and II of enhanced 911 service as defined by the FCC. However, under the FCC order, providers are entitled to be reimbursed for the E-911 costs. These costs are unknown. In effect, the bill imposes a tax to fund a system, the cost of which is not determined. Because of this uncertainty, I am unwilling to increase taxes by \$2 million upon North Dakota taxpayers.

Importantly, vetoing this legislation does not jeopardize the current 911 system. Technology is available for enhanced 911 service, and we should allow that technology to evolve before asking our citizens to pay more for cellular phone service.

For these reasons, I hereby veto SB 2307.

Sincerely,

Edward T. Schafer
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commercial mobile radio service provider" means any provider of wireless telephone service or any communications service capable of accessing a public safety answering point by dialing the digits 9-1-1.
2. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, or emergency 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
3. "Enhanced 911 wireless service" has the meaning provided by the federal communications commission under a two-phase implementation of a wireless enhanced 911 technology. Phase I provides for a commercial mobile radio service subscriber's telephone number and the location of the cell site transmitting the call to those public safety answering points which request enhanced 911 wireless service. Phase II requires commercial mobile radio service providers to be able to identify the location of the commercial mobile radio service subscriber within one hundred twenty-five meters at least sixty-seven percent of the time by October 1, 2001.
4. "Public safety answering point" means a communications facility operated on a twenty-four-hour basis which first receives 911 calls from persons in a 911 service area and which may, as appropriate, directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.

- ~~2.~~ 5. "Telephone access line" means the principal land-line or fixed-line access to the telephone telecommunications company's switched network including an outward dialed trunk or access register.
6. "Wireless telephone service" means commercial mobile radio service as defined by 47 U.S.C. 332(d)(1) and includes any of the following:
- a. Services commonly referred to as wireless.
 - b. Services provided by wireless real time two-way voice communication devices, including radio-telephone communications used in:
 - (1) Cellular telephone services;
 - (2) Personal communications services; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone services, a personal communications services, or a network radio access line.

SECTION 2. Section 57-40.6-02.1 of the North Dakota Century Code is created and enacted as follows:

57-40.6-02.1. Wireless 911 service fee, administration, collection. A wireless 911 service fee is imposed at a rate of forty cents per month on each commercial mobile radio service telephone service number provided within the state, except for those issued to the federal government or agencies of the federal government. The tax commissioner shall administer this section and the fee imposed. The commissioner may adopt rules not inconsistent with this chapter necessary for its administration, including appropriate penalties and interest for late payment of the fee. The fee must be collected and remitted as follows:

1. Each commercial mobile radio service provider shall add the wireless 911 service fee to its subscribers' billings, separately stating the amount of the 911 wireless service fee.
2. The commercial mobile radio service provider shall collect the 911 service fee and may retain two percent of the fees collected by the provider for the purpose of defraying the administrative costs of collecting and remitting the fees.
3. The commercial mobile radio service provider shall remit the balance of the wireless service fees collected to the tax commissioner on or before the last day of the month following the month the fees were collected.
4. The tax commissioner may retain one percent of the fees received for the services rendered in connection with their collection and disbursement and transfer this amount to the state treasurer at the end of each month for deposit in the state general fund.
5. The tax commissioner shall transfer the balance of the fees received under this section to the state treasurer at the end of each month for deposit in the wireless 911 service fund.

SECTION 3. Section 57-40.6-02.2 of the North Dakota Century Code is created and enacted as follows:

57-40.6-02.2. Wireless 911 service fund - Allocation - Continuing appropriation. Revenues deposited in the wireless 911 service fund are provided as a standing and continuing appropriation to the state treasurer for allocation as follows:

1. Revenues from twenty-five cents per month per telephone service number from the fee imposed under section 57-40.6-02.1 must be allocated monthly in equal shares to political subdivisions operating a public safety answering point. Political subdivisions served by the state public safety answering point must be treated as one public safety answering point for the purposes of this subsection and must be allocated a portion of the revenues based upon the proportion each of those political subdivision's telephone access lines bears to the total number of telephone access lines served by the state public safety answering point. Revenue received under this subsection must be used by the political subdivision for establishing and operating a 911 emergency services communication system including enhanced 911 wireless service.
2. Revenues remaining after the allocation under subsection 1 must be allocated monthly to political subdivisions responsible for the emergency services communication system in each political subdivision based upon the proportion the population served by the emergency services communication system bears to the total population of the state served by emergency services communication systems, as indicated by the most current census. However, these funds and the interest earned must be held in escrow by the state treasurer for each political subdivision until the governing board of the political subdivision certifies that it has formally begun the implementation of phase I or phase II of enhanced 911 wireless service as defined by the federal communications commission. The certification must include documentation of agreements between political subdivisions or public safety answering points and commercial mobile service providers which authorize the purchase of equipment or services necessary to implement enhanced 911 wireless service. The funds must be designated for the implementation of enhanced 911 wireless service and allocated by political subdivisions on the basis of actual costs incurred by public safety answering points and commercial mobile radio service providers.

SECTION 4. AMENDMENT. Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency service communication system advisory committee, any~~ Any telecommunications company providing emergency 911 service shall provide upon request, on an annual basis, current customer names, addresses, and telephone numbers to each public service safety 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 5. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. Names, addresses, and telephone numbers provided to a 911 public ~~service~~ safety answering point under section 57-40.6-06 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~~ safety answering point or its agents or employees for any other purpose except those specifically required by state law or under a court order issued for good cause shown after notice to the submitting telecommunications company or commercial mobile radio service provider, or upon written consent granted by the submitting telecommunications company or commercial mobile radio service provider.

SECTION 6. AMENDMENT. Section 57-40.6-08 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-08. Emergency services communication system or emergency instructions - Liability.

1. A public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company that provides access to an emergency services communication system ~~at or below cost,~~ or any officer, agent, or employee of any public agency, public safety agency, commercial mobile radio service provider, 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 this chapter.
2. A person who gives emergency instructions through a an emergency services communication system as provided under this chapter, 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.
4. A public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company that provides access to an emergency services communications system or any officer, agency, or employee of any public agency, public safety agency, commercial mobile radio service provider, or local exchange telecommunications company and its data base vendor is not liable for any civil damages resulting from the release of a wireless customer's telephone number or other subscriber information provided to any public safety answering point.
5. All proprietary information of commercial mobile radio service providers, including a commercial mobile radio service provider's

customer lists and information concerning a commercial mobile radio service provider's actual or estimated costs and revenues, submitted to a public agency, public safety agency, political subdivision, or state agency may be released or published in aggregate amounts that do not identify or allow identification of number of subscribers, costs, or revenues of an individual commercial mobile radio service provider.

SECTION 7. Section 57-40.6-10 of the North Dakota Century Code is created and enacted as follows:

57-40.6-10. Enhanced 911 wireless service planning committee. An enhanced 911 wireless service planning committee is created to consist of five members. The governor shall appoint one member to represent commercial mobile radio service providers, one member to represent telecommunications companies providing land-line or fixed-line service, one member to represent a county served by state radio communications in the emergency services communication system, and one member from the information technology committee of the legislative council. The North Dakota association of counties shall appoint one member of the committee. The governor shall designate the chairman of the committee. The state radio communications office shall provide staff services to the committee.

The committee shall develop proposed legislation for implementation of a statewide plan regarding enhanced 911 wireless service and fees, administration, and allocation of revenues. Before November 1, 2001, the proposed legislation must be presented by the committee to the budget section of the legislative council for consideration.

Disapproved April 20, 1999
Filed April 20, 1999

MEASURE APPROVED OVER GOVERNOR'S VETO

CHAPTER 564

HOUSE BILL NO. 1266 (Representative Berg)

WORKERS COMPENSATION BUREAU CAPITAL PURCHASES

VETO

March 22, 1999

The Honorable Francis J. Wald
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Dear Speaker Wald:

I am returning House Bill 1266 regarding the purchase of a building by the North Dakota Workers Compensation Bureau (NDWCB) and hereby veto the same. The bill gives the NDWCB the authority to purchase a building under certain conditions and provides the authority until July 31, 2003.

The return on investment for the NDWCB has averaged 11.3% since 1993. This is about equal to the purported cost savings suggested by the Bureau in its financial analysis for buying a building. Real cost savings from this legislation appears to be minimal.

The bill is premised on the uncertain notion that it will save money that might be used for higher benefits or reduced premiums. Yet, the bill does not require any such purported savings to be passed on to the employees or the employers of this state.

Finally, I believe this legislation does not set good policy for the entire State of North Dakota. NDWCB is a state agency funded by taxes from North Dakota employers. We should make decisions regarding the Bureau based upon sound policy for the entire state. If we are to shift public policy toward buying buildings, then we should do so in a broad examination of the policy itself, not for just one agency or on an ad hoc basis. We should consult with our financial planners and the private sector, consider the impact to other agencies, potential cost savings, the impact to local property taxes and the affect upon local governments that such a policy may have.

For these reasons, I must respectfully veto HB 1266.

Sincerely,

Edward T. Schafer
Governor

Disapproved March 22, 1999
Filed April 13, 1999

NOTE: The Governor's veto of House Bill No. 1266 was not sustained. For the text of House Bill No. 1266 as approved, see chapter 548.

INITIATED MEASURE APPROVED

CHAPTER 565

ELECTION OF COUNTY OFFICERS

An initiated measure for the amendment of section 8 of article VII of the Constitution of North Dakota, relating to requiring elected county officers be elected in the jurisdiction they serve, requiring candidates for elective county office be residents at the time of election, and requiring sheriffs be elected.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 8 of article VII of the Constitution of North Dakota is amended and reenacted as follows:

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective ~~county~~ office provided for by the counties shall be for a term of four years. Elective officers shall be elected by the electors in the jurisdiction in which the elected officer is to serve. A candidate for election must be a resident in the jurisdiction in which they are to serve at the time of the election. The office of sheriff shall be elected.

Approved November 3, 1998 166,708 to 34,961

NOTE: This was measure No. 2 on the general election ballot.

CONSTITUTIONAL AMENDMENT APPROVED

CHAPTER 566

SENATE CONCURRENT RESOLUTION NO. 4005 (Senator Lips)

FILLING OF JUDICIAL VACANCIES

A concurrent resolution for the amendment of section 13 of article VI of the Constitution of North Dakota, relating to the filling of judicial vacancies.

STATEMENT OF INTENT

This amendment provides that a person appointed by the governor to fill a judicial vacancy on the supreme court or district court serves at least two years and until the next general election thereafter. The subsequent term for that judgeship may be reduced to allow for the minimum two-year term and for the staggering of judicial elections.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 13 of article VI 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 1998, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article VI of the Constitution of North Dakota is amended and reenacted as follows:

Section 13.

1. A judicial nominating committee ~~shall~~ must be established by law. ~~Any~~ The governor shall fill any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy for the remainder of the term. ~~An~~ Except as provided in subsection 2, an appointment shall must continue until the next general election, when the office ~~shall~~ must be filled by election for the remainder of the term.
2. An appointment must continue for at least two years. If the term of the appointed judgeship expires before the judge has served at least two years, the judge shall continue in the position until the next general election immediately following the service of at least two years.
3. Notwithstanding sections 7 and 9 of this article, the term of the judge elected at the subsequent general election provided for in subsection 2 is

reduced to the number of years remaining in the subsequent term after the appointee has served at least two years.

Approved June 9, 1998

56,057

to

22,535

NOTE: This was measure No. 1 on the 1998 primary election ballot.

CONSTITUTIONAL AMENDMENT DISAPPROVED

CHAPTER 567

SENATE CONCURRENT RESOLUTION NO. 4010

(Senators Solberg, Cook, Tomac)
(Representatives Carlson, Nichols, Tollefson)

HIGHER EDUCATION INSTITUTION REFERENCES

A concurrent resolution for the amendment of subsection 1 of section 6 of article VIII and sections 12 and 13 of article IX of the Constitution of North Dakota, relating to the names, locations, and missions of the institutions of higher education.

STATEMENT OF INTENT

This amendment removes references to the names, locations, and missions of the institutions of higher education.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to subsection 1 of section 6 of article VIII and sections 12 and 13 of article IX of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1998, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsection 1 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

1. ~~A~~ ~~The state~~ board of higher education, ~~to be officially known as the state board of higher education,~~ is hereby created for the shall control and administration of administer the following state educational institutions, ~~to wit:~~
 - a. ~~The state university and school of mines, at Grand Forks, with their substations.~~
 - b. ~~The state agricultural college and experiment station, at Fargo, with their substations.~~
 - c. ~~The school of science, at Wahpeton.~~
 - d. ~~The state normal schools and teachers colleges, at Valley City, Mayville, Minot, and Dickinson.~~
 - e. ~~The school of forestry, at Bottineau.~~

- f. ~~And such other state institutions of higher education as may hereafter be established.~~

SECTION 2. AMENDMENT. Section 12 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 12. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States in the Act of Congress approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe subject to the limitations provided in the article on school and public lands contained in this constitution.

1. The seat of government at the city of Bismarck in the county of Burleigh.
2. The state university and the school of mines at the city of Grand Forks, in the county of Grand Forks.
3. The North Dakota state university of agriculture and applied science at the city of Fargo, in the county of Cass.
4. A state normal school at the city of Valley City, in the county of Barnes, and the legislative assembly, in apportioning the grant of eighty thousand acres of land for normal schools made in the Act of Congress referred to shall grant to the said normal school at Valley City, as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.
5. The school for the deaf and dumb of North Dakota at the city of Devils Lake, in the county of Ramsey.
6. 3. A state training industrial school at the city of Mandan, in the county of Morton.
7. A state normal school at the city of Mayville, in the county of Traill, and the legislative assembly in apportioning the grant of lands made by Congress in the Act aforesaid for state normal schools shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.
8. 4. A state hospital for the insane mentally ill at the city of Jamestown, in the county of Stutsman. ~~And the~~ The legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the Act of Congress aforesaid for other educational and charitable institutions to the benefit and for the endowment of said institution, and there shall be located the state hospital.
5. An institution for the developmentally disabled at or near the city of Grafton, in the county of Walsh; ~~an institution for the feebleminded, on the grounds purchased by the secretary of the interior for a penitentiary building.~~

SECTION 3. AMENDMENT. Section 13 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 13. The following public institutions are located as provided, each to have so much of the remaining grant of one hundred seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law:

1. A ~~soldiers'~~ veterans' home, when located, or such other charitable institution as the legislative assembly may determine, at the city of Lisbon in the county of Ransom, with a grant of forty thousand acres of land.
2. The school for the blind at the city of Grand Forks in the county of Grand Forks or at ~~such other~~ another location as may be determined by the legislative assembly to be in the best interests of the students of ~~such the~~ the institution and the state of ~~North Dakota~~.
3. ~~A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau, or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.~~
4. ~~A school of science or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton in the county of Richland, with a grant of forty thousand acres.~~
5. ~~A state college at the city of Minot in the county of Ward.~~
6. ~~A state college at the city of Dickinson in the county of Stark.~~
7. A state hospital for the mentally ill at ~~such~~ a place within this state ~~as shall be~~ selected by the legislative assembly.

No other institution of a character similar to any one of those located by article IX, section 12, or this section ~~shall~~ may be established or maintained without an amendment of this constitution.

Disapproved November 3, 1998 70,403 to 123,278

NOTE: This was measure No. 1 on the 1998 general election ballot.

CONSTITUTIONAL AMENDMENTS PROPOSED

CHAPTER 568

SENATE CONCURRENT RESOLUTION NO. 4016

(Senators Holmberg, Cook, C. Nelson)
(Representatives Berg, Delmore, Drovdal)

STATE BOARD OF HIGHER EDUCATION MEMBERSHIP

A concurrent resolution for the amendment of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the membership of the state board of higher education.

STATEMENT OF INTENT

This amendment would change from one to two individuals holding a bachelor's degree from a state institution of higher education who could serve on the state board of higher education at one time.

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 VIII 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsection 2 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for not less than five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

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 person~~ two persons holding a bachelor's degree from a particular institution under the jurisdiction of the state board of higher education may serve on the board at any one time. 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 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 employment.

The governor shall nominate from a list of three names for each position, selected by action of four of the following five persons: the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, shall appoint from the list to the state board of higher education seven members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for four 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. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the legislature has adjourned.
- c. If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as provided, a member who shall serve until the opening of the next session of the legislature, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office shall be deemed vacant and the governor shall nominate another candidate for the office. The same proceedings shall be followed as are set forth in this section. If the legislature 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 a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm 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.

Filed March 25, 1999

NOTE: This will be measure No. 1 on the 2000 primary election ballot.

CHAPTER 569

SENATE CONCURRENT RESOLUTION NO. 4017

(Senators W. Stenehjem, Andrist, Holmberg)
(Representatives DeKrey, Delmore, Devlin)

EXECUTIVE BRANCH OFFICER ELECTION

A concurrent resolution for the amendment of section 5 of article V of the Constitution of North Dakota, relating to the election of executive branch officers.

STATEMENT OF INTENT

This amendment provides that one-half of the elected state officials will be chosen by voters in each election year. To start this arrangement, the agriculture commissioner, attorney general, secretary of state, and tax commissioner will be elected for two-year terms in 2004, and thereafter will be elected to four-year terms.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 5 of article V 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article V of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office of the elected officials except the public service commissioners are four years, except that in 2004 the agriculture commissioner, attorney general, secretary of state, and tax commissioner are elected to a term of two years. The terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office other than for governor and lieutenant governor receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Filed March 25, 1999

NOTE: This will be measure No. 2 on the 2000 primary election ballot.

CHAPTER 570**SENATE CONCURRENT RESOLUTION NO. 4022**

(Senators Grindberg, G. Nelson, Schobinger)
(Representatives Clark, Dorso, Grosz)

STATE TREASURER NOT ELECTED

A concurrent resolution for the amendment of section 2 of article V, section 3 of article IX, and section 12 of article X of the Constitution of North Dakota, relating to the office of state treasurer; to repeal section 15 of article XII of the Constitution of North Dakota, relating to the duties of the state treasurer upon the issuance of legal tender by banks in the state; to provide for transition; and to provide an effective date.

STATEMENT OF INTENT

This amendment removes the state treasurer as an elected constitutional officer effective January 1, 2003, and provides that upon approval of this amendment the term of the state treasurer elected in 2000 will be two years. The amendment also repeals a section providing for the duties of the state treasurer on issuance of legal tender by banks in the state.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to section 2 of article V, section 3 of article IX, and section 12 of article X of the Constitution of North Dakota, and the repeal of section 15 of article XII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article V of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, and tax commissioner; ~~and treasurer~~. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, and tax commissioner; ~~and treasurer~~ must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 2. AMENDMENT. Section 3 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The superintendent of public instruction, governor, attorney general, secretary of state, and ~~state treasurer~~ agriculture commissioner comprise a board of commissioners, to be denominated the "board of university and school lands". Subject to the provisions of this article and any law that may be passed by the legislative assembly, the board has control of the appraisement, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law.

SECTION 3. AMENDMENT. Section 12 of article X of the Constitution of North Dakota is amended and reenacted as follows:

Section 12.

1. All public moneys, from whatever source derived, ~~shall~~ must be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the ~~same moneys~~, to the ~~state treasurer~~ proper official as provided by law, and deposited by ~~him~~ the official to the credit of the state, and ~~shall be~~ paid out and disbursed only pursuant to appropriation first made by the ~~legislature~~ legislative assembly; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the ~~workmen's~~ workers' compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' ~~insurance and fund for retirement fund~~, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the ~~state highway~~ department of transportation and the various counties for the construction, reconstruction, and maintenance of public roads.

This constitutional amendment ~~shall does not be construed to~~ apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; ~~and this constitutional amendment shall not be construed to amend or repeal existing laws or Acts amendatory thereof concerning such fees and moneys.~~

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision ~~shall may~~ be audited, allowed, or paid until a full itemized statement in writing ~~shall be is~~ filed with the officer or officers whose duty it ~~may be is~~ to audit the same, and then only upon warrant drawn upon the treasurer of ~~such~~ the funds by the proper officer or officers.

~~3. This amendment shall become effective on July 1, 1999.~~

SECTION 4. REPEAL. Section 15 of article XII of the Constitution of North Dakota is repealed.

SECTION 5. TRANSITION. The term of the state treasurer elected in 2000 is two years.

SECTION 6. EFFECTIVE DATE. If approved by the voters, sections 1 through 4 of this measure become effective on January 1, 2003.

Filed March 31, 1999

NOTE: This will be measure No. 3 on the 2000 primary election ballot.

CHAPTER 571**SENATE CONCURRENT RESOLUTION NO. 4023**

(Senators Solberg, Grindberg, O'Connell)

LEGISLATIVE ASSEMBLY VACANCY FILLING

A concurrent resolution for the amendment of section 11 of article IV of the Constitution of North Dakota, relating to the filling of vacancies in the legislative assembly.

STATEMENT OF INTENT

This amendment would allow the legislative assembly to provide by law the method for filling vacancies in the legislative assembly to replace the requirement that the governor issues writs of election to fill vacancies.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 11 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 11 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 11. The ~~governor shall issue writs of election~~ legislative assembly may provide by law a procedure to fill such vacancies as may occur occurring in either house of the legislative assembly.

Filed April 6, 1999

NOTE: This will be measure No. 4 on the 2000 primary election ballot.

CHAPTER 572**HOUSE CONCURRENT RESOLUTION NO. 3018**

(Representatives Belter, Carlson, Henegar)
(Senators G. Nelson, B. Stenehjem, Traynor)

RIGHT TO HUNT, TRAP, AND FISH

A concurrent resolution to create and enact a new section to article XI of the Constitution of North Dakota, relating to hunting, trapping, and fishing.

STATEMENT OF INTENT

This amendment would provide that hunting, trapping, and fishing are a valued part of residents' heritage and will be preserved for the people and managed by law and regulation for the public good.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article XI 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

Hunting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good.

Filed April 6, 1999

NOTE: This will be measure No. 1 on the 2000 general election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 573

HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)
(Budget Committee on Long-Term Care)

PHYSICIAN PSYCHIATRIC AND GEROPSYCHIATRIC TRAINING STUDY

A concurrent resolution directing the Legislative Council to study the expansion of psychiatric and geropsychiatric training for primary care physicians at the University of North Dakota School of Medicine and Health Sciences.

WHEREAS, North Dakota's rural counties have generally maintained federal health professional shortage area designation for psychiatric services; and

WHEREAS, recent national studies indicate that a significant portion of mental health care for residents of rural areas may be rendered by primary care providers; and

WHEREAS, mental health services in rural areas are far less accessible than is considered desirable; and

WHEREAS, it is important to enhance the knowledge of networking and consulting opportunities, as well as to support the enhancement of service delivery; and

WHEREAS, there is a need to enhance the mental health service capacity of primary care providers, nurse practitioners, and physician assistants in the rural areas; and

WHEREAS, the University of North Dakota School of Medicine and Health Sciences is the only physician training facility in the state of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the expansion of psychiatric and geropsychiatric training for primary care physicians at the University of North Dakota School of Medicine and Health Sciences; 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 574**HOUSE CONCURRENT RESOLUTION NO. 3002**

(Legislative Council)
(Budget Committee on Long-Term Care)

AMERICAN INDIAN LONG-TERM CARE STUDY

A concurrent resolution directing the Legislative Council to study American Indian long-term care and case management needs, access to appropriate services, and the functional relationship between state service units and the North Dakota American Indian reservation service systems.

WHEREAS, the 1995-96 Task Force on Long-Term Care Planning reported that in the area of long-term care service inventory, distribution, and alternatives, long-term care services within North Dakota American Indian service areas and reservations vary widely, ranging from a nursing facility that is not owned or operated by a tribe to unlicensed facilities and home-based care provided under several entitlement programs; and

WHEREAS, coordination and application of various American Indian long-term care programs and service components are directed by tribal policy and organizational structure; and

WHEREAS, various noninstitutional care components appear to be available on reservations, but service arrangement and delivery may not be adequately coordinated and case management services for elderly reservation residents, if available, could result in a significant increase in the effectiveness of service delivery for that population; and

WHEREAS, during the 1997-98 interim, the Department of Human Services and the Department of Health formed a Task Force on Long-Term Care Planning to study American Indian long-term care and case management needs, access to services, and the functional relationship between state service units and American Indian reservation service systems; and

WHEREAS, the Task Force on Long-Term Care Planning was unable to establish a subcommittee, composed of representatives from each North Dakota American Indian reservation, to carry out these provisions during the 1997-98 interim; and

WHEREAS, the Task Force on Long-Term Care Planning has determined that a separate working group needs to be established on each reservation in order to successfully carry out these provisions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study American Indian long-term care and case management needs, access to appropriate services, and the functional relationship between state service units and the North Dakota American Indian reservation service systems; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 575**HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)
(Budget Committee on Long-Term Care)

**SENIOR CITIZEN MILL LEVY MATCH PROGRAM
STUDY**

A concurrent resolution directing the Legislative Council to study the mill levy match program for senior citizens to determine if the program could be expanded to enhance home and community-based service availability.

WHEREAS, the 1971 Legislative Assembly established the mill levy match program for senior citizens and the 1991 Legislative Assembly amended the program and restricted the types of expenses for which those mill levy funds can be used to a variety of services designed to assist senior citizens in maintaining independence, including home-delivered meals, transportation, outreach assistance, congregate dining, and health-related services; and

WHEREAS, the 1997 Legislative Assembly appropriated \$1,050,000 for the mill levy match program for senior citizens for the 1997-99 biennium, an increase of \$150,000 over the 1995-97 appropriation of \$900,000; and

WHEREAS, the majority of funds from the mill levy match program for senior citizens is distributed by city or county commissioners to agencies that contract with the Department of Human Services to provide services under the Older Americans Act; and

WHEREAS, many elderly residents of rural communities throughout the state rely on these service providers as one of the few alternatives to institutional care; and

WHEREAS, funds from the mill levy match program for senior citizens are also used to leverage a variety of federal funds that provide for an assortment of in-home services for the frail and elderly; and

WHEREAS, the use of funds from the mill levy match program for senior citizens to serve an at-risk population in the least restrictive environment makes the program an integral part of the continuum of long-term care services; and

WHEREAS, the Task Force on Long-Term Care Planning views the mill levy match program for senior citizens as an important component in the overall provision of long-term care services to the senior citizens of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the mill levy match program for senior citizens to determine if the program could be expanded to enhance home and community-based service availability; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 576**HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)
(Budget Committee on Long-Term Care)

SWING-BED PROCESS STUDY

A concurrent resolution directing the Legislative Council to study the swing-bed process.

WHEREAS, the June 1996 Task Force on Long-Term Care Planning report indicated that swing-bed care, as a form of long-term care, is relatively unregulated when compared to nursing facilities; and

WHEREAS, the June 1996 Task Force on Long-Term Care Planning report indicated that little data is available about individuals served in a swing-bed setting; and

WHEREAS, the June 1996 Task Force on Long-Term Care Planning report indicated that it appears that some swing-bed facilities were beginning to use swing beds for permanent placements rather than just short-term stays, thereby circumventing controls over the expansion of long-term care beds; and

WHEREAS, census data indicates that swing-bed hospitals are admitting residents for long periods of time and that a total of 22 percent of admissions were for more than six months and 47 residents were in swing beds for more than a year; and

WHEREAS, there is concern that long-term placement of residents in swing beds is going beyond the original concept of swing beds and that some hospitals have gone beyond the original intent and are providing ongoing long-term care services to their residents; and

WHEREAS, swing-bed services are not required to be at the same level as long-term care facility services and there continues to be a lack of any standardized measurement process available to determine the quality of care being provided in swing-bed facilities; and

WHEREAS, there are 1,594 potential swing beds in North Dakota; and

WHEREAS, the Task Force on Long-Term Care Planning expressed concern about the impact the number of available swing beds could have on the overall goal of providing long-term care services in the least restrictive, most cost-effective manner;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the swing-bed process to determine if changes are necessary in the current requirements for providing services to swing-bed residents, including the need for a standard assessment process and

whether any limits such as length of stay or number of available swing beds should be implemented; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 577**HOUSE CONCURRENT RESOLUTION NO. 3005**

(Legislative Council)
(Child Support Committee)

**DOMESTIC RELATIONS PRO SE REPRESENTATION
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of facilitating pro se representation in domestic relations matters.

WHEREAS, more than one-half of all actions filed in district courts involve domestic relations cases, including child support order modification proceedings and visitation enforcement proceedings; and

WHEREAS, legal expenses associated with even the most basic of child support modification proceedings and visitation enforcement proceedings make these proceedings cost-prohibitive for most people; and

WHEREAS, many low-income persons must rely on legal aid offices, child support enforcement units, or attorneys willing to do pro bono domestic relations cases for legal services; and

WHEREAS, legal aid offices, child support enforcement units, and pro bono attorneys have limited resources to assist persons in domestic relations matters; and

WHEREAS, there is a presumption that application of the child support guidelines results in the proper amount of child support, and it is usually in a child's best interests to have a relationship with both parents; and

WHEREAS, lack of ability to pay for legal services may result in persons failing to seek modification of child support orders and enforcement of visitation;

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 facilitating pro se representation in domestic relations 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 578**HOUSE CONCURRENT RESOLUTION NO. 3006**

(Legislative Council)
(Child Support Committee)

FAMILY LAW MEDIATION APPROVAL

A concurrent resolution expressing legislative approval of the actions taken by the State Bar Association of North Dakota Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters.

WHEREAS, the Joint Task Force on Family Law was established in January 1995 and has a mission that includes reviewing dispute resolution alternatives to determine potential application in the family law system, including divorce; and

WHEREAS, the traditional legal system is adversarial in nature and is usually counterproductive in fostering communication, cooperation, and a working relationship between parents, skills that may be integral to successful postdivorce childrearing; and

WHEREAS, mediation is based on communication and mutual agreement, which may be productive in teaching problem-solving skills that may decrease postdivorce litigation; and

WHEREAS, the Joint Task Force on Family Law has invested a large amount of time and expended a great amount of energy in drafting and promoting suggested local rules of court that mandate mediation orientation in most divorce cases filed in district court; and

WHEREAS, mandatory mediation orientation should assist in improving the availability of mediators in the rural communities and the western region of the state; and

WHEREAS, in response to the work of the Joint Task Force on Family Law, several judicial districts have agreed to adopt local court rules that mandate mediation orientation in most divorce cases;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly approves of the actions taken by the State Bar Association of North Dakota Joint Task Force on Family Law to facilitate and promote mediation as a method of addressing family law matters; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Chief Justice of the North Dakota Supreme Court, the Board of Governors of the State Bar Association of North Dakota, and to each member of the Joint Task Force on Family Law.

Filed March 8, 1999

CHAPTER 579**HOUSE CONCURRENT RESOLUTION NO. 3007**
(Legislative Council)
(Education Services Committee)**TITLE 15 CONTINUED STUDY**

A concurrent resolution directing the Legislative Council to continue its study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education.

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state have been adopted over the years without regard to their interrelationship; and

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state set forth neither clear objectives nor directives for their administration; and

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state are duplicative, inconsistent, or illogically arranged; and

WHEREAS, the Legislative Council, through the Education Services Committee, conducted a study during the 1997-98 interim which resulted in recommendations for the revision of a substantial portion of Title 15;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council continue its study of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education; and

BE IT FURTHER RESOLVED, that the purpose of the study is to recommend changes to laws that are found to be irrelevant, duplicative, inconsistent, illogically arranged, or unclear in their intent and direction; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 580**HOUSE CONCURRENT RESOLUTION NO. 3009**

(Representative Belter)

CARGILL-CONTINENTAL MERGER REVIEW URGED

A concurrent resolution urging Congress to carefully review the planned merger between Cargill, Incorporated, and Continental Grain Company and take any action appropriate to minimize potentially adverse effects on farmers, ranchers, and consumers that could result from such increased concentration in the agricultural sector.

WHEREAS, on November 10, 1998, Cargill, Incorporated, announced its intention to purchase the worldwide grain operations of rival Continental Grain Company; and

WHEREAS, Cargill, Incorporated, is the nation's largest private company, with revenues during this past fiscal year in excess of \$51.4 billion; and

WHEREAS, Continental Grain Company is one of the nation's largest private companies, with revenues during this past fiscal year in excess of \$16 billion; and

WHEREAS, a merger of these two companies would result in a single entity controlling over 40 percent of all United States corn exports, 33 percent of all soybean exports, and at least 20 percent of all wheat exports; and

WHEREAS, a merger of these two companies could have far-reaching implications for agricultural producers and consumers, especially so if the merger stifles or drives out competition in smaller local markets and key distribution points;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to carefully review the planned merger between Cargill, Incorporated, and Continental Grain Company and take any action appropriate to minimize potentially adverse effects on farmers, ranchers, and consumers that could result from such increased concentration in the agricultural sector; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1999

CHAPTER 581**HOUSE CONCURRENT RESOLUTION NO. 3010**

(Representatives Hanson, Fairfield, Kroeber, Pollert)
(Senators Nething, Wanzek)

LOUIS L'AMOUR STAMP APPROVAL URGED

A concurrent resolution urging the Citizens Stamp Advisory Committee to approve for release a stamp honoring Louis L'Amour.

WHEREAS, Louis L'Amour was born in Jamestown, North Dakota, March 22, 1908; and

WHEREAS, prior to his death in 1988, Louis L'Amour published more than 400 short stories and 100 novels, wrote 65 television scripts, and sold over 45 stories to the motion picture industry, including "Hondo" starring John Wayne; and

WHEREAS, the public has purchased over 260 million Louis L'Amour books making him the fastest selling novelist in America; and

WHEREAS, Louis L'Amour was awarded North Dakota's Theodore Roosevelt Rough Rider Award, the highest recognition a present or former North Dakotan may receive from the State, for achieving national recognition for a genuine achievement of lasting significance which reflects credit and honor upon North Dakota and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Citizens Stamp Advisory Committee to approve for release a stamp honoring Louis L'Amour; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to each member of the Citizens Stamp Advisory Committee and to each member of the North Dakota Congressional Delegation.

Filed March 5, 1999

CHAPTER 582**HOUSE CONCURRENT RESOLUTION NO. 3011**

(Representative Sveen)

STATE AGENCY TRANSFER TO RURAL AREAS STUDY

A concurrent resolution directing the Legislative Council to study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas.

WHEREAS, the state of North Dakota rents office space in Bismarck for several of its agencies and institutions; and

WHEREAS, the state should periodically evaluate office space needs and the cost of renting office space; and

WHEREAS, technological advances allow employees to conduct their work from offices outside the capitol building, including offices in rural areas where building rents may be less expensive; and

WHEREAS, by transferring state offices to rural areas where there exists an available work force and a lower cost of living, the state could revitalize the economies and tax bases of rural communities while bringing government closer to the people; and

WHEREAS, by transferring state offices to rural areas on an incremental basis, the state could lessen any negative impact on state employees working in Bismarck;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural 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-seventh Legislative Assembly.

Filed March 15, 1999

CHAPTER 583**HOUSE CONCURRENT RESOLUTION NO. 3012**

(Representatives R. Kelsch, Carlisle, Boehm, Hanson, Sandvig)
(Senator Naaden)

LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution designating House and Senate employment positions and fixing compensation.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That for the Fifty-sixth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the wages indicated:

| HOUSE | |
|--|----------|
| Chief Clerk | \$102.00 |
| Assistant chief clerk | 86.00 |
| Desk reporter | 96.00 |
| Sergeant-at-arms | 80.00 |
| Bill clerk | 80.00 |
| Secretary to majority leader | 94.00 |
| Staff assistant to majority leader | 80.00 |
| Secretary to minority leader | 94.00 |
| Staff assistant to minority leader | 80.00 |
| Secretary to Speaker | 80.00 |
| Chief committee clerk | 94.00 |
| Appropriations Committee clerk | 94.00 |
| Assistant Appropriations Committee clerk | 90.00 |
| Committee clerk for three-day committee | 90.00 |
| Committee clerk for two-day committee | 84.00 |
| Assistant committee clerk | 74.00 |
| Deputy sergeant-at-arms | 66.00 |
| Chief page and bill book clerk | 72.00 |
| Calendar clerk | 80.00 |
| Telephone attendant | 64.00 |
| Legislative assistant | 62.00 |
| SENATE | |
| Secretary of the Senate | \$102.00 |
| Assistant secretary of the Senate | 86.00 |
| Desk reporter | 96.00 |
| Bill clerk | 80.00 |
| Sergeant-at-arms | 80.00 |
| Secretary to majority leader | 94.00 |
| Staff assistant to majority leader | 80.00 |
| Secretary to minority leader | 94.00 |
| Staff assistant to minority leader | 80.00 |
| Chief committee clerk | 94.00 |
| Appropriations Committee clerk | 94.00 |

| | |
|--|-------|
| Assistant Appropriations Committee clerk | 90.00 |
| Committee clerk for three-day committee | 90.00 |
| Committee clerk for two-day committee | 84.00 |
| Assistant committee clerk | 74.00 |
| Payroll clerk | 76.00 |
| Deputy sergeant-at-arms | 66.00 |
| Chief page and bill book clerk | 73.00 |
| Calendar clerk | 80.00 |
| Chief telephone attendant | 76.00 |
| Telephone attendant | 64.00 |
| Legislative assistant | 62.00 |

BE IT FURTHER RESOLVED, that each employee of the Fifty-sixth Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the House or the Senate, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that each majority leader and each minority leader is entitled to two staff assistants, but each majority or minority leader may hire fewer or more assistants so long as the total daily compensation for the assistants hired does not exceed the total daily amount authorized for those positions by this resolution; and

BE IT FURTHER RESOLVED, that the report of the Employment Committee of the respective house identify the number of employees in each position by listing every employee and the position for which employed; and

BE IT FURTHER RESOLVED, that with the approval of the Employment Committee of the respective house, a position may be converted to a part-time position, with the daily compensation converted to a per hour rate of pay; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided by this resolution for that employee ceases effective the last day of employment.

Filed January 18, 1999

CHAPTER 584**HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representatives Winrich, Svedjan, Eckre)
(Senators Fischer, Thompson)

RED RIVER BASIN WATER MANAGEMENT STUDY

A concurrent resolution directing the Legislative Council to study basinwide water management of the Red River Basin.

WHEREAS, the effective management of the state's water resources is essential to the health, prosperity, and general welfare of the people of North Dakota; and

WHEREAS, most of the Red River Basin's existing water resource districts are based upon political boundaries and not hydrologic boundaries; and

WHEREAS, rivers, streams, and watersheds in the Red River Basin do not correspond with existing political boundaries; and

WHEREAS, the flood of 1997 caused a great deal of damage in communities throughout the Red River Basin; and

WHEREAS, several proposals for basinwide water management that hold the promise of reducing damage from future floods are being developed; and

WHEREAS, reduction in flood levels would significantly increase the safety and security of conventional flood protection systems, such as dikes, that are being developed in the Red River Basin;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study basinwide water management of the Red River Basin; 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-seventh legislative assembly.

Filed March 31, 1999

CHAPTER 585**HOUSE CONCURRENT RESOLUTION NO. 3014**

(Representatives Brandenburg, D. Johnson, Pollert, Weisz)
(Senators G. Nelson, Wanzek)

AGRICULTURAL PESTICIDE STUDY

A concurrent resolution directing the Legislative Council to study the disparity in prices and the inconsistency in the registration of agricultural pesticides.

WHEREAS, the agricultural sector is highly dependent on the availability of agricultural pesticides; and

WHEREAS, Canadian and United States governmental entities are involved in the approval and registration of agricultural pesticides; and

WHEREAS, chemicals approved by the Canadian government might not be approved by the United States government; and

WHEREAS, chemicals approved by the Canadian government and not approved by the United States government are used on food products that enter the stream of commerce in the United States; and

WHEREAS, chemicals approved by the United States and Canada are available to Canadian producers at a price much more favorable than that enjoyed by United States producers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the disparity in prices and inconsistency in the registration of agricultural pesticides; 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 586**HOUSE CONCURRENT RESOLUTION NO. 3016**

(Representatives S. Kelsh, Jensen)
(Senators Fischer, Lee, T. Mathern)

GUARDIANSHIP SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the qualifications, standards, and the monitoring requirements for guardianship services for incapacitated persons.

WHEREAS, the Guardianship Association of North Dakota has been formed; and

WHEREAS, a 1996 study of guardianship needs conducted by the Bush Foundation and the Aging Services Division of the North Dakota Department of Human Services determined that a large number of incapacitated persons in the state are in need of guardianship services; and

WHEREAS, there is an insufficient number of qualified and available guardians in the state to handle the complex needs of incapacitated persons; and

WHEREAS, many family members of incapacitated persons are unable to be guardians due to distance and other factors; and

WHEREAS, demographic projections for North Dakota indicate significant increases in the number of elderly persons who will be in need of a range 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 qualifications, standards, and the monitoring requirements for guardianship services for incapacitated persons; and

BE IT FURTHER RESOLVED, that the study include an examination of other states' qualifications, standards, and monitoring requirements for guardianship services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 587**HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Monson, R. Kelsch, Lemieux, Nicholas, Nowatzki)

OILSEED COUNCIL MEMBERSHIP STUDY

A concurrent resolution directing the Legislative Council to study the composition of the Oilseed Council and the impact, at the state and federal levels, of any changes in membership of the council.

WHEREAS, the production, development, marketing, and promotion of sunflowers, safflowers, rapeseed or canola, crambe, and flax is important to the general welfare of the people of this state; and

WHEREAS, it is in the public interest that better methods of production, processing, and marketing of sunflowers, safflowers, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved; and

WHEREAS, the Oilseed Council consists of one participating sunflower grower elected from each of seven districts, one participating safflower grower appointed by the Governor, one participating crambe grower appointed by the Governor, one participating rapeseed or canola grower appointed by the Governor, one participating flax grower appointed by the Governor, and one member appointed by the director of the Agricultural Experiment Station; and

WHEREAS, the composition of the council should ensure that members are in a position to fully represent the depth and breadth of the oilseed industry in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the composition of the Oilseed Council and the impact, at the state and federal levels, of any potential changes in membership of the council; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 588**HOUSE CONCURRENT RESOLUTION NO. 3021**

(Representatives Froelich, D. Johnson, Meyer, Renner)
(Senator Solberg)

**FISH AND WILDLIFE SERVICE NOT TO LIST PRAIRIE
DOG AS THREATENED OR ENDANGERED URGED**

A concurrent resolution urging the United States Fish and Wildlife Service not to list the blacktailed prairie dog, *Cynomys ludovicianus*, as a threatened or endangered species under the Endangered Species Act.

WHEREAS, the National Wildlife Federation has petitioned the United States Fish and Wildlife Service to list the blacktailed prairie dog as a threatened species; and

WHEREAS, large concentrations of prairie dog populations cause widespread crop destruction and effectively compete with livestock for the same grazing areas; and

WHEREAS, the entrance holes to prairie dog burrows are a hazard to livestock;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the United States Fish and Wildlife Service not to list the blacktailed prairie dog, *Cynomys ludovicianus*, as a threatened or endangered species under the Endangered Species Act; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the regional director of the United States Fish and Wildlife Service, the director of the Fish and Wildlife Service, the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 1999

CHAPTER 589**HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representatives Maragos, Glassheim, R. Kelsch)
(Senator W. Stenehjem)

HERITAGE TOURISM STUDY

A concurrent resolution directing the Legislative Council to study heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage tourism in the state.

WHEREAS, an objective and professional review of North Dakota's tourism industry and potential conducted by the International Resort and Tourism Advisors in 1989 concluded that cultural and heritage tourism provided the best avenues for growth in the state's tourism sector; and

WHEREAS, the 1989 study launched a 10-year plan to build the state's heritage tourism infrastructure; and

WHEREAS, 10 years have elapsed since the study, and the importance of heritage tourism to the state continues to grow; and

WHEREAS, several state agencies and private sector organizations within the state cooperate and are dedicated to the development of heritage tourism in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study heritage tourism and the relationships among the State Historical Society, Parks and Recreation Department, Tourism Department, Department of Economic Development and Finance, and private sector promoters and developers of heritage tourism in 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-seventh Legislative Assembly.

Filed March 25, 1999

CHAPTER 590**HOUSE CONCURRENT RESOLUTION NO. 3029**

(Representatives Nelson, Warner, D. Johnson)

(Senator Naaden)

**CROP PROTECTION PRODUCT HARMONIZATION
URGED**

A concurrent resolution urging Congress to aggressively pursue legislation that will permit substantially similar crop protection products registered in Canada to be purchased and used by farmers in the United States; to direct the administrator of the Environmental Protection Agency to work toward the harmonization of crop protection product legislation, and in the event substantial progress is not made, to disallow the importation of any commodity into this country if the commodity contains any crop protection product not approved for use in this country; and to require that the manufacturers of crop protection products publicly justify any price discrepancies between similar products sold in Canada and in the United States.

WHEREAS, farmers in this state use crop protection products in a safe and responsible manner; and

WHEREAS, crop protection products are a necessary component of an integrated pest management system, especially with respect to minor crops; and

WHEREAS, the availability of crop protection products helps to diversify the agricultural economic base; and

WHEREAS, agricultural products are imported into the United States after having been exposed to crop protection products that have not been approved by the administrator of the Environmental Protection Agency; and

WHEREAS, agricultural products imported into the United States after having been exposed to agricultural pesticides that have not been approved by the administrator of the Environmental Protection Agency may have chemical residues that could pose a threat to the public health; and

WHEREAS, the United States and Canada do not recognize each other's scientific data generated for use in the labeling of crop protection products; and

WHEREAS, the North American Free Trade Agreement allows large amounts of agricultural commodities to cross the border between the United States and Canada; and

WHEREAS, the percentage of agricultural commodities entering the United States through North Dakota is particularly high compared to those entering through other states; and

WHEREAS, many of the agricultural commodities entering the United States through North Dakota are produced with crop protection products that are not

available to producers in this state or which are available at substantially higher prices than those charged in Canada; and

WHEREAS, farmers and ranchers in this state suffer economically when they must compete with Canadian producers; and

WHEREAS, the cost of production for Canadian producers is significantly less, due in part to the availability of crop protection products at prices substantially lower than those charged producers in this state; and

WHEREAS, the North American Free Trade Agreement set as a goal the complete harmonization of crop protection product registrations between the countries participating in the agreement; and

WHEREAS, the goal of harmonization has been ignored by the administrator of the Environmental Protection Agency and the Congress of the United States through its passage of the Food Quality Protection Act; and

WHEREAS, United States Senators Dorgan and Conrad have introduced legislation that would permit the registration and use in this state of Canadian crop protection products;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to aggressively pursue legislation that will permit substantially similar crop protection products registered in Canada to be purchased and used by farmers in the United States; to direct the administrator of the Environmental Protection Agency to work toward the harmonization of crop protection product legislation, and in the event substantial progress is not made, to disallow the importation of any commodity into this country if the commodity contains any crop protection product not approved for use in this country; and to require that the manufacturers of crop protection products publicly justify any price discrepancies between similar products sold in Canada and in the United States; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1999

CHAPTER 591**HOUSE CONCURRENT RESOLUTION NO. 3030**
(Representatives Nelson, D. Johnson, Pollert)
(Senator Klein)**CROP PROTECTION PRODUCT AVAILABILITY
URGED**

A concurrent resolution urging Congress to ensure the availability of as many crop protection products as possible, including post-harvest crop protectants, to use actual scientific data to determine the safety of crop protection products, to accept scientific data generated by the North Dakota State University Main Research Center and by the research extension centers regarding the safety of crop protection products, to establish uniform policies governing the implementation of the 1996 Food Quality Protection Act, and to ensure that implementation of the 1996 Food Quality Protection Act does not negatively impact agricultural production nor the availability and affordability of food.

WHEREAS, farmers in this state use crop protection products in a safe and responsible manner; and

WHEREAS, the loss of many crop protection products will jeopardize the very foundation of the safe and abundant food supply for all consumers; and

WHEREAS, the elimination of such crop protection products will have devastating effects on the economy of our state and jeopardize the livelihood of many farmers in this state; and

WHEREAS, the 1996 Food Quality Protection Act substantially changes the way crop protection products are evaluated to scientifically determine their health effects; and

WHEREAS, the administrator of the Environmental Protection Agency is making decisions regarding which crop protection products will be made available and which will not; and

WHEREAS, it appears that the administrator of the Environmental Protection Agency is making overly conservative decisions based on insufficient information, instead of attempting to obtain sufficient scientific data; and

WHEREAS, the method by which the administrator of the Environmental Protection Agency is implementing the 1996 Food Quality Protection Act may cause farmers to lose access to valuable crop protection products and consequently jeopardize farm production; and

WHEREAS, if farmers are not able to choose from a wide array of crop protection products, farmers will lose the ability to practice proper conservation tillage and integrated pest management, thereby causing environmental impacts, and foreign producers will enjoy a competitive edge; and

WHEREAS, the absence of reliable information regarding crop protection products results in fewer options for farmers who grow minor crops, significantly

disrupts successful integrated pest management programs, and jeopardizes the availability and affordability of agricultural products;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to ensure the availability of as many crop protection products as possible, including post-harvest crop protectants, to use actual scientific data to determine the safety of crop protection products, to accept scientific data generated by the North Dakota State University Main Research Center and by the research extension centers regarding the safety of crop protection products, to establish uniform policies governing the implementation of the 1996 Food Quality Protection Act, and to ensure that implementation of the 1996 Food Quality Protection Act does not negatively impact agricultural production nor the availability and affordability of food; and

BE IT FURTHER RESOLVED, that the Secretary of the State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 6, 1999

CHAPTER 592**HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Froelich, Meyer)

LIVESTOCK INSURANCE INITIATIVES URGED

A concurrent resolution urging Congress to encourage the formation of new legislative or administrative initiatives to extend insurance options, similar to crop insurance options, to livestock producers.

WHEREAS, devastating weather conditions have caused livestock producers to experience shrinking profit margins; and

WHEREAS, marketing livestock in an ever-increasing monopolistic environment has caused livestock producers to experience shrinking profit margins; and

WHEREAS, many livestock producers in this state are being driven out of business by anticompetitive forces that control the markets and acts of God that severely restrict their income; and

WHEREAS, farmers have for many years viewed crop insurance as a last remaining safety net that can be tailored to fit their own risk management needs; and

WHEREAS, livestock producers need a revenue insurance safety net that they can tailor to fit their own risk management needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to encourage the formation of new legislative or administrative initiatives to extend insurance options, similar to crop insurance options, to livestock producers; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1999

CHAPTER 593**HOUSE CONCURRENT RESOLUTION NO. 3033**

(Representatives Solberg, Drovdal, Kerzman, Meyer, Stefonowicz)
(Senator Lyson)

MARKETING LOAN CAP INCREASE URGED

A concurrent resolution urging Congress to raise the cap on marketing loans available to farmers and to adopt a cost of production index adjustment mechanism.

WHEREAS, farm families and rural communities are suffering an economic downturn similar to the farm crisis of the 1980s; and

WHEREAS, farmers in this state and elsewhere have had to contend with prolonged periods of disastrous weather and crop disease; and

WHEREAS, the 1996 farm bill replaced the previous system of farm income protection with a set of fixed, but declining, payments unrelated to commodity prices and capped commodity marketing loan rates; and

WHEREAS, providing for a cap on commodity marketing loan rates which would reflect cost of production would provide immediate assistance to farm families;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to raise the cap on marketing loans available to farmers and to adopt a cost of production index adjustment mechanism; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1999

CHAPTER 594**HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Lemieux, Meyer)

PESTICIDE HARMONIZATION URGED

A concurrent resolution urging the Environmental Protection Agency and the Congress of the United States to increase resources for and efforts of the U.S.-Canada Technical Working Group to harmonize pesticide regulations between the two countries, to commit more resources and efforts toward establishing tolerances for pesticides registered for use in Canada but not in the United States, and to accept registration data currently accepted by Canadian officials in support of Canadian pesticide registrations.

WHEREAS, it is the intent of the Legislative Assembly that North Dakota become the trusted provider of the highest-quality food in the world with prosperous family farms, thriving rural communities, and world-class stewardship of resources. It is further the intent of the Legislative Assembly to significantly increase net farm income, improve the quality of rural life, and increase North Dakota's rural population; and

WHEREAS, the Legislative Assembly seeks to achieve these goals by making North Dakota agriculture products synonymous with high quality, dominating the premium markets; increasing value-added agricultural processing; diversifying and increasing the value of agricultural production; increasing farm and nonfarm cooperation that supports thriving rural communities and enhances our natural resources; and creating a political, regulatory, economic, trade, financial, and natural resource environment in which North Dakota producers can compete in the global marketplace; and

WHEREAS, North Dakota farmers are forced to compete with farmers from other countries, especially Canada, who are able to use pesticide products that are not registered for use in the United States; and

WHEREAS, Canadian pesticides are often available at substantially reduced prices in formulations that are almost identical to those available to North Dakota producers but are not registered for use in the United States. As a result, North Dakota farmers are unable to realize similar savings and are at a competitive disadvantage; and

WHEREAS, the Environmental Protection Agency needs to put more resources into the harmonization of the registration of crop protection chemicals with Canada; and

WHEREAS, use of Canadian registration data by the Environmental Protection Agency could accelerate its registration process for appropriate crop protection chemicals;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Environmental Protection Agency and the Congress of the United States to increase resources for and efforts of the U.S.-Canada Technical Working Group to harmonize pesticide regulations between the two countries, to commit more resources and efforts toward establishing tolerances for pesticides registered for use in Canada but not in the United States, and to accept registration data currently accepted by Canadian officials in support of Canadian pesticide registrations; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Director of the Environmental Protection Agency, to the chairmen of the House and Senate Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed March 31, 1999

CHAPTER 595**HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives Warner, Nelson)
(Senator Heitkamp)

NAFTA AND GATT REVIEW URGED

A concurrent resolution urging Congress to review the North American Free Trade Agreement and the General Agreement on Tariffs and Trade and amend those portions of the agreements that treat North Dakota agricultural producers inequitably or repeal the agreements in their entirety.

WHEREAS, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade have created international trade zones for agricultural products; and

WHEREAS, the North American Free Trade Agreement and the General Agreement on Tariffs and Trade were to have opened up expanded trade opportunities and vast new markets for our agricultural products; and

WHEREAS, neither the North American Free Trade Agreement nor the General Agreement on Tariffs and Trade have been able to stop the flood of agricultural products from other countries into the United States; and

WHEREAS, despite the existence of the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, North Dakota agricultural producers are experiencing income reductions and economic downturns similar to the farm crisis of the early 1980s;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to review the North American Free Trade Agreement and the General Agreement on Tariffs and Trade and amend those portions of the agreements that treat North Dakota agricultural producers inequitably or repeal the agreements in their entirety; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1999

CHAPTER 596**HOUSE CONCURRENT RESOLUTION NO. 3038**

(Representatives Monson, D. Johnson, Nowatzki)
(Senator Heitkamp)

**INDUSTRIAL HEMP PRODUCTION AUTHORIZATION
URGED**

A concurrent resolution urging Congress to acknowledge the difference between the marijuana plant and the agricultural crop known as industrial hemp; to acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and to assist United States producers by clearly authorizing the commercial production of industrial hemp and by being the leading advocate for the industrial hemp industry.

WHEREAS, industrial hemp refers to varieties of the cannabis plant which have a low content of tetrahydrocannabinol (THC) and that are cultivated for fiber and oil; and

WHEREAS, industrial hemp should not be confused with varieties of cannabis which have a high content of tetrahydrocannabinol (THC) and which are commonly referred to as marijuana; and

WHEREAS, the commercial production and cultivation of industrial hemp is now permitted in Canada, under licenses and authorizations issued by Health Canada; and

WHEREAS, Health Canada controls, through rules, all activities relating to the importation, exportation, possession, production, sale, provision, transport, sending, delivering and offering for sale of industrial hemp; and

WHEREAS, industrial hemp is grown legally throughout Europe and Asia; and

WHEREAS, many farmers facing uncertain times in the agricultural marketplace view the reintroduction of industrial hemp as another potential alternative crop that will have long-term economic benefits to the farmers who produce the hemp and the persons who utilize hemp in the production of textiles, paper products, concrete reinforcement, automobile parts, plastics, cosmetics, organic foods and natural body products; and

WHEREAS, Congress never originally intended to prohibit the production of industrial hemp when restricting the production, possession, and use of marijuana;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to acknowledge the difference between the marijuana plant and the agricultural crop known as industrial hemp; to acknowledge that allowing and

encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and to assist United States producers by clearly authorizing the commercial production of industrial hemp and by being the leading advocate for the industrial hemp industry; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed March 23, 1999

CHAPTER 597**HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Berg, Kempenich, Lemieux)

EMPLOYMENT SECURITY SYSTEM FUNDING URGED

A concurrent resolution urging Congress to enact legislation to return adequate funds to states to fund the employment security system and give a fair return to employers for the taxes employers pay under the Federal Unemployment Tax Act.

WHEREAS, employers pay a federal employment security tax under the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.] as a payroll tax that produces revenue dedicated solely to use in the federal-state employment security system; and

WHEREAS, employers' payroll taxes pay for administering the employment security system, providing veterans' reemployment assistance, and producing labor market information to assist in matching workers' skills with the employment needs of employers; and

WHEREAS, congressional appropriations have remained flat in Wagner-Peyser funding, despite adequate availability of funds from dedicated employer taxes because the Federal Unemployment Tax Act accounts are used for federal budget deficit reduction; and

WHEREAS, congressional appropriations have not kept pace with fixed costs of operating the employment security system, creating problems similar to the problems the gas tax creates for transportation; and

WHEREAS, states cannot support an infrastructure to administer the employment security system, provide veterans' reemployment assistance, and produce labor market information, without adequate, predictable resources; and

WHEREAS, delivering services with inadequate federal funding is a major challenge facing the State of North Dakota and Job Service North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to enact legislation to return adequate funds to states to fund the employment security system and give a fair return to employers for the taxes employers pay under the Federal Unemployment Tax Act; and

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Speaker and Clerk of the United States House of Representatives, to the President Pro Tempore and Secretary of the United States Senate, to the news media of North Dakota, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 1999

CHAPTER 598**HOUSE CONCURRENT RESOLUTION NO. 3040**

(Representatives Wald, Belter, Grosz)
(Senators Kinnoin, Solberg, Wardner)

INCOME TAX FAIRNESS URGED

A concurrent resolution urging Congress to make the federal income tax fairer, simpler, flatter, lower, and subject to fewer exceptions and special interest provisions.

WHEREAS, the federal income tax is the primary exposure of most citizens to the federal government, and instead of fostering respect for the Congress and the federal government, the income tax is a source of derision for those entities; and

WHEREAS, the common perceptions are that the federal income tax is an example of government gone astray and that the existing Internal Revenue Code is the product of manipulation of Congress by special interest groups; and

WHEREAS, due to the complexity of laws, regulations, and rulings on income taxes, the average taxpayer has little hope of being proficient in preparing his or her own federal income tax return; and

WHEREAS, no other Act of Congress would do more to enhance public perception of Congress and the federal government than to make the federal income tax fairer, simpler, flatter, lower, and subject to fewer exceptions and special interest provisions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to make the federal income tax fairer, simpler, flatter, lower, and subject to fewer exceptions and special interest provisions; 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 18, 1999

CHAPTER 599**HOUSE CONCURRENT RESOLUTION NO. 3041**

(Representative Grosz)

(Senator Traynor)

GASOLINE SULFUR LEVEL REDUCTION URGED

A concurrent resolution urging the Environmental Protection Agency to reduce gasoline sulfur levels to provide the flexibility of a regional approach that will maximize air quality benefits and to propose regulations reducing vehicle emissions in recognition that fuels and vehicles work in tandem and neither fuels nor vehicles can be addressed in isolation.

WHEREAS, the Environmental Protection Agency believes that sulfur reductions are necessary to maximize emissions reductions from motor vehicles; and

WHEREAS, the Environmental Protection Agency plans to propose very stringent gasoline sulfur regulations and more stringent vehicle tailpipe emission standards; and

WHEREAS, some states' air pollution problems are far greater than others and require greater reduction of sulfur and other states, especially those states in the western portion of the nation, have minimal air pollution problems that require less of a reduction of sulfur; and

WHEREAS, because California gasoline was developed to address air quality problems unique to California and air quality problems in other states are not as severe as those in California, the air quality problems in other states do not necessitate the same solutions; and

WHEREAS, limitation of consumer mobility and freedom may result from reducing sulfur in gasoline because higher manufacturing costs may be passed on to consumers; and

WHEREAS, although new investments in clean air are needed, consumers should not have to pay more than necessary for gasoline to achieve the goal of clean air; and

WHEREAS, fuels and vehicles work together as a system and the right combination of fuel and vehicle controls will result in cleaner air and a cost-effective solution; and

WHEREAS, the American Petroleum Institute and the National Petrochemical Refiners Association have proposed a program for reducing gasoline sulfur levels which will reduce nitrogen oxides emissions by more than 75,000 tons annually and will cut gasoline sulfur levels by at least 50 percent;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Environmental Protection Agency to reduce gasoline sulfur levels to provide the flexibility of a regional approach that will maximize air quality benefits; to propose regulations that reflect the American Petroleum Institute and National Petrochemical Refiners Association gasoline sulfur reduction proposal, which calls for 150 parts per million average sulfur levels in 28 primary eastern states and East Texas, and 300 parts per million average sulfur levels in the remaining states, with the exception of California, which has a program specific to California; to propose regulations that are cost-effective in order to limit the burden on consumers; and to propose regulations that reduce vehicle emissions that recognize that fuels and vehicles work in tandem and that neither fuels nor vehicles can be addressed in isolation, therefore, the Environmental Protection Agency must strike a balance in regulating vehicles and fuels; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Regional Administrator of Region VIII of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency, the State Health Officer, the Governor, and each member of the North Dakota Congressional Delegation.

Filed March 11, 1999

CHAPTER 600**HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representatives Price, Rose)
(Senator Lee)

END-OF-LIFE DECISIONMAKING STUDY

A concurrent resolution directing the Legislative Council to study the clarity and continuity of end-of-life decisionmaking issues and related laws.

WHEREAS, a broad variety of state laws address end-of-life issues, including informed consent for health care, guardianship, organ donation, living will, durable power of attorney for health care, durable power of attorney, and power of attorney; and

WHEREAS, state law addressing these issues was enacted over the course of several years, resulting in the lack of continuity and dispersal throughout the North Dakota Century Code; and

WHEREAS, many North Dakotans fail to adequately plan for issues that arise at the end of life because of the complexity of relevant laws; and

WHEREAS, the National Conference of Commissioners on Uniform State Laws recognized the value of clarity and continuity in making health care decisions and therefore recommended the Uniform Health Care Decision Act to the states for enactment; and

WHEREAS, at least 16 states have studied the advantages and disadvantages of enacting comprehensive advanced health care directive statutes, concluding a comprehensive statutory scheme is a reasonable solution; and

WHEREAS, the Robert Wood Johnson Foundation provided a grant to the North Dakota End of Life Task Force, which is in part studying end-of-life decisionmaking issues;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the clarity and continuity of end-of-life decisionmaking issues and related laws; 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 601**HOUSE CONCURRENT RESOLUTION NO. 3045**

(Representatives Mueller, Pollert, Renner)
(Senators O'Connell, Urlacher, Wanzek)

GRAIN CREDIT-SALE CONTRACT STUDY

A concurrent resolution directing the Legislative Council to study grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency.

WHEREAS, state law does not require bond coverage to protect farmers in grain warehouse and grain buyer insolvency proceedings if the grain was sold via credit-sale; and

WHEREAS, the use of various forms of credit-sale contracts has risen dramatically in recent years; and

WHEREAS, this situation has greatly increased the risk exposure of farmers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study grain credit-sale contracts to determine the need to provide protection for farmers against grain warehouse and grain buyer insolvency; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 602**HOUSE CONCURRENT RESOLUTION NO. 3046**

(Representatives Stefonowicz, Nelson, Schmidt, Severson, Solberg)
(Senator Solberg)

HEALTH CARE DELIVERY STUDY

A concurrent resolution directing the Legislative Council study the challenges facing the delivery of health care in this state, including the concerns relating to reimbursement of hospitals for medical services, technological innovation, and possible regionalization of services.

WHEREAS, the delivery of health care is necessary for the health, safety, and welfare of all residents of this state; and

WHEREAS, changing demographics indicate the average age of a rural resident of this state is aging and the rural population is decreasing; and

WHEREAS, managed care is changing the manner of providing health care services in rural portions of this state; and

WHEREAS, shifting populations may cause regionalization of provisions of hospital services; and

WHEREAS, technological innovations such as telemedicine will affect the delivery of rural health care; and

WHEREAS, hospitals in this state are reimbursed for medical services by a variety of sources, including individuals, private insurers, Medicaid, Medicare, Indian Health Services, TRICARE, and Civilian Health and Medical Program of the Veterans Administration; and

WHEREAS, rural hospitals are facing financial hardship in part because of low reimbursement rates for medical services; and

WHEREAS, changes in the Medicare reimbursement rate schedule, a benchmark for health care insurers in setting reimbursement rate schedules, may negatively impact rural hospital reimbursement rates for medical services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the challenges facing the delivery of health care in this state, including the concerns relating to reimbursement of hospitals for medical services, technological innovations, and possible regionalization of 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 603**HOUSE CONCURRENT RESOLUTION NO. 3047**

(Representatives Mueller, Metcalf, Hanson)
(Senators Holmberg, Robinson, B. Stenehjem)

**NORTH AMERICAN WILDLIFE ENFORCEMENT
MUSEUM SUPPORT**

A concurrent resolution expressing the support for the privately funded construction and operation of the North American wildlife enforcement memorial museum and educational center at the International Peace Garden.

WHEREAS, the North American Wildlife Enforcement Officers Association has undertaken to build the North American wildlife enforcement memorial museum and educational center at the International Peace Garden on the border of the United States and Canada in this state; and

WHEREAS, the museum will be operated and maintained through private funding; and

WHEREAS, the North Dakota Game Warden Association and the North American Wildlife Enforcement Officers Association supports and has been working tirelessly in this effort; and

WHEREAS, a goal of the North American wildlife enforcement memorial museum and educational center is to preserve the rich history of the work of wildlife enforcement officers and to protect and preserve our wildlife and outdoor heritage; and

WHEREAS, the museum will be used to educate the public of the historical and present-day roles of wildlife law enforcement and natural resources conservation officers by collecting, preserving, and exhibiting examples of enforcement tools, implements, art specimens, historical data, and devices used in the illegal destruction of our natural resources; and

WHEREAS, the museum will contain a "Hall of Honors" for all wildlife officers in the United States and Canada who lost their life while on duty;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly expresses its support for the privately funded construction and operation of the North American wildlife enforcement memorial museum and educational center at the International Peace Garden;

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, Premier of Manitoba, Director of the Game and Fish Department, the North Dakota Game Warden Association, the North American Wildlife Enforcement Officers Association, the Superintendent of the International Peace Garden, the President of the International Peace Garden Board of Directors, and each member of the International Peace Garden Board of Directors.

Filed March 23, 1999

CHAPTER 604**HOUSE CONCURRENT RESOLUTION NO. 3049**

(Representatives Dorso, Monson, Boucher)
(Senators G. Nelson, St. Aubyn, T. Mathern)

LIGNITE INDUSTRY TAXATION INCENTIVE STUDY

A concurrent resolution directing the Legislative Council to study taxation and regulatory incentives for the lignite industry in order to improve its competitive position in the energy marketplace and to identify federal and international impediments to development of the lignite industry and potential state actions to address such impediments.

WHEREAS, North Dakota's lignite industry mines approximately thirty million tons of lignite annually, contributing to our state's and nation's energy independence by generating electricity for more than two million people in the northern Great Plains region and by producing synthetic natural gas from coal that heats 300,000 homes and businesses in eastern states, which is equivalent to over 20,000 barrels of oil per day; and

WHEREAS, North Dakota's lignite industry generates over 20,000 direct and indirect jobs for North Dakota, over one billion dollars in annual business volume, and over sixty-five million dollars in annual tax revenue; and

WHEREAS, the Legislative Assembly has previously determined that it is an essential governmental function and public purpose to assist with the development and wise use of North Dakota's vast lignite resources by supporting a lignite research, development, and marketing program; and

WHEREAS, the Gascoyne mine has closed due to the loss of its contract in favor of out-of-state subbituminous coal; and

WHEREAS, subbituminous coal has been utilized in two North Dakota coal generating facilities; and

WHEREAS, with deregulation and restructuring within the electrical industry, there are increasing competitive pressures on the lignite industry; and

WHEREAS, government taxation and regulatory costs constitute up to thirty percent of the cost of North Dakota lignite; and

WHEREAS, new proposed environmental requirements on both the federal and international level threaten the future of the lignite industry; and

WHEREAS, North Dakotans desire to maintain their state's status as a clean air state and as a state with an equitable tax structure;

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 providing taxation incentives and eliminating unnecessary regulatory burdens in order to make the lignite industry more competitive in order to protect and enhance the jobs and economic activity associated with the development of the state's abundant lignite resource, while at the same time maintaining a clean and healthy environment for all of our state's citizens; and

That the Legislative Council study the coal severance tax and energy conversion tax structure and identify proposals that would make the lignite industry more competitive; and

That the Legislative Council identify federal and international impediments that threaten development of the state's lignite industry and make recommendations on any state actions that could assist in addressing federal and international restrictions that adversely impact future development of the state's abundant lignite resource; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 605**HOUSE CONCURRENT RESOLUTION NO. 3050**

(Representatives Lundgren, Haas, R. Kelsch)

(Senators Holmberg, Kelsh)

GIFTED STUDENT STUDY

A concurrent resolution directing the Legislative Council to study methods of identifying and providing appropriate services to gifted students.

WHEREAS, a gifted student is one who shows the potential for performing at a remarkably high level of accomplishment when compared with others of the student's age, experience, and environment; and

WHEREAS, a gifted student exhibits high performance capability in intellectual, creative, and artistic areas, possesses an unusual leadership capacity, and excels in specific academic fields; and

WHEREAS, a gifted student requires services and activities not ordinarily provided within the regular education program; and

WHEREAS, a gifted student requires services that must include an educational challenge in academic content, appropriate enrichment opportunities, and instruction in thinking skills at a level that meets the student's educational need; and

WHEREAS, meeting the needs of gifted students will create an environment in which all students benefit from appropriate educational challenges;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study methods of identifying and providing appropriate services to gifted students; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 606**HOUSE CONCURRENT RESOLUTION NO. 3051**

(Representatives Bernstein, Boehm, Schmidt)
(Senators Robinson, Solberg, Wanzek)

MILK MARKETING BOARD STUDY

A concurrent resolution directing the Legislative Council to study the role and mission of the Milk Marketing Board.

WHEREAS, the Milk Marketing Board was established in 1967 to eliminate unfair trade practices in the milk industry; and

WHEREAS, the board is authorized to regulate the production, transportation, processing, storage, distribution, and sale of milk; and

WHEREAS, there may be new methods to promote, foster, and encourage the production and maintenance of an adequate and healthful supply of milk and milk products; and

WHEREAS, after 32 years of milk industry regulation, the Legislative Assembly should determine whether there is a need for continued governmental regulation of the production, transportation, processing, storage, distribution, and sale of milk and milk products, and if that need is found to exist, to determine whether the Milk Marketing Board is the appropriate vehicle to provide such regulation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the role and mission of the Milk Marketing Board; 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 607**HOUSE CONCURRENT RESOLUTION NO. 3052**

(Representatives Metcalf, Bernstein, Severson, Weisz)
(Senators Bowman, Thompson)

**TRANSPORTATION INFRASTRUCTURE EFFECT ON
AGRICULTURAL COMMODITIES PRICE STUDY**

A concurrent resolution directing the Legislative Council to study how the transportation infrastructure and services delivery system in this state affect the price for agricultural commodities grown or raised in this state.

WHEREAS, this state is centrally located in the United States and contains the geographical center of North America; and

WHEREAS, agriculture is integral to the economy of this state and the successful marketing of agricultural products depends upon the access to and cost of transportation for agricultural commodities; and

WHEREAS, most of the agricultural commodities grown or raised in this state are exported for consumption outside this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study how the transportation infrastructure and services delivery system in this state affect the price for agricultural commodities grown or raised 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 608**HOUSE CONCURRENT RESOLUTION NO. 3053**

(Representatives Jensen, Price, Wentz)
(Senator Thane)

**MENTAL HEALTH AND SUBSTANCE ABUSE PARITY
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and impact of mental health and substance abuse parity in the state of North Dakota.

WHEREAS, it is recognized that mental and addictive disorders are among the most prevalent and most often neglected health problems in our nation; and

WHEREAS, it is recognized that appropriate mental health services and substance abuse treatment improve lives and increase productivity; and

WHEREAS, health plans offered by employers typically provide less coverage for mental health and substance abuse treatment than for general medical and surgical services; and

WHEREAS, "full parity" means that insurance benefits for any group of mental health and substance abuse diagnoses are the same as insurance benefits for medical or surgical diagnoses with respect to cost sharing, service limits, and annual or lifetime spending limits; and

WHEREAS, the National Mental Health Parity Act of 1996 was passed by Congress, signed by President Clinton, and implemented on January 1, 1998, and nineteen states, including Minnesota and South Dakota, have mental health legislation in place and another thirteen states have legislation pending; and

WHEREAS, the aforementioned thirty-two states have accumulated data concerning the impact of mental health parity in their state, studies have also been conducted by Coopers and Lybrand, Milliman and Robertson, Inc., Price Waterhouse, the Congressional budget office, and the substance abuse and mental health services administration; and

WHEREAS, a study by the substance abuse and mental health services administration found that mental health parity has had a small effect on health plan premiums, causing increases of between 0.4 percent and 3.6 percent;

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 impact of mental health and substance abuse parity in the state of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 609**HOUSE CONCURRENT RESOLUTION NO. 3054**

(Representatives Delmore, Hawken, Lemieux, R. Kelsch)
(Senators Cook, O'Connell)

SCHOOL ACCREDITATION STANDARDS STUDY

A concurrent resolution directing the Legislative Council to study accreditation standards for elementary and secondary schools, including optional accreditation standards, the fiscal impact of accreditation standards, and the waiver of accreditation standards based on student performance.

WHEREAS, the current standards for the accreditation of elementary and secondary schools in this state were issued by the Superintendent of Public Instruction in 1991; and

WHEREAS, in order to comply with certain provisions of the current standards for the accreditation of elementary and secondary schools in this state, school boards often have to expend funds that could be put to greater benefit for other purposes; and

WHEREAS, the expenditure requirements directly or indirectly imposed by certain provisions of the current state standards for the accreditation of elementary and secondary schools prevent school boards from accomplishing goals based on the priorities of their school districts; and

WHEREAS, the current state standards for the accreditation of elementary and secondary schools do not include any mechanisms for measuring the effect of the standards on academic achievement or performance; and

WHEREAS, a review of optional accreditation standards, such as those by the North Central Association Commission on Schools, may result in improving accreditation standards in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study accreditation standards for elementary and secondary schools, including optional accreditation standards, the fiscal impact of accreditation standards, and the waiver of accreditation standards based on student performance; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 610**HOUSE CONCURRENT RESOLUTION NO. 3055**
(Representatives Drovdal, Kempenich, Meyer)**LANDOWNER DEPREDATION AND DAMAGE STUDY**

A concurrent resolution directing the Legislative Council to study the extent of and remedies for damage caused to landowners from depredation by big game animals, waterfowl, and turkeys and damage caused to property by hunters.

WHEREAS, there were 864 deer depredation sites during the winter of 1996-97 and there have already been 49 deer depredation sites during the winter of 1998-99; and

WHEREAS, there was at least \$30,200 in damage caused to landowners by waterfowl in 1994, \$46,570 in 1995, \$33,169 in 1996, \$43,465 in 1997, and \$39,675 in 1998, not including damage caused by wild turkeys; and

WHEREAS, between June 30, 1997, and July 1, 1998, there were 1,596 game and fish violations, including 194 big game violations, of which 44 were for hunting off an established trail or hunting on posted land without permission;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the extent of and remedies for damage caused to landowners from depredation by big game animals, waterfowl, and turkeys and damage caused to property by hunters; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 611**HOUSE CONCURRENT RESOLUTION NO. 3056**

(Representatives Thorpe, Timm)

(Senator Watne)

(Approved by the Delayed Bills Committee)

KIMBERLY PETTERSEN CONGRATULATED

A concurrent resolution congratulating Ms. Kimberly Pettersen on being named the state's top high school student volunteer in The Prudential Spirit of Community Awards.

WHEREAS, Ms. Kimberly Pettersen of Minot, North Dakota, has achieved national recognition for exemplary volunteer service by receiving a 1999 Prudential Spirit of Community Award; and

WHEREAS, this national award honors young volunteers across the country for the extraordinary commitment they make to serving their communities; and

WHEREAS, Ms. Kimberly Pettersen received this award by giving generously of her time and energy in promoting a smoke-free environment for her community and her state; and

WHEREAS, the strength of our communities and the vitality of American society depend upon the selfless dedication of young people like Ms. Kimberly Pettersen;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly extends to Ms. Kimberly Pettersen its heartiest congratulations for being named the state's top high school student volunteer in The Prudential Spirit of Community Awards; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Ms. Kimberly Pettersen.

Filed March 15, 1999

CHAPTER 612**HOUSE CONCURRENT RESOLUTION NO. 3057**

(Representatives Meyer, Kerzman)
(Senator Krauter)

**OVERISSUED FOOD STAMP BENEFIT COLLECTION
REEVALUATION URGED**

A concurrent resolution urging Congress and the Secretary of Agriculture to reevaluate the feasibility, desirability, and cost effectiveness of requiring states to collect certain outstanding claims of overissued food stamp benefits.

WHEREAS, the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires states to collect all outstanding claims of overissued food stamp benefits dating back to 1988; and

WHEREAS, the outstanding amount of overissued benefits in North Dakota is approximately 1.2 million dollars for the 10-year period; and

WHEREAS, the Act requires the collection be made by reducing the food stamp allotment to a household, withholding amounts from unemployment compensation, recovering from federal pay or a federal tax refund, or any other means; and

WHEREAS, section 844 of the Act provides that the state agency is not required to collect the overissuances if it can demonstrate that the collection is not cost effective; and

WHEREAS, the overissuances of food stamp benefits were the result of agency error and not recipient fraud; and

WHEREAS, many of the 3,500 persons who have been contacted by the Department of Human Services for repayment of overissued food stamp benefits are elderly and living on very low incomes; and

WHEREAS, the collection of the overissued amount from low-income persons will increase the affected persons' need for other forms of public assistance;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States and the Secretary of Agriculture to reevaluate the feasibility, desirability, and cost effectiveness of requiring states to collect certain outstanding claims of overissued food stamp benefits; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1999

CHAPTER 613**HOUSE CONCURRENT RESOLUTION NO. 3058**

(Representatives Warner, Belter, Koppang, Nicholas)

CHEMICAL APPLICATION INDUSTRY STUDY

A concurrent resolution directing the Legislative Council to study the chemical application industry and develop a method for assessing or determining damage due to misapplication and for resolution of disputes through mediation.

WHEREAS, the spraying of chemical pesticides is an important part of the agricultural commodity production process and is an important part of an integrated pest management process; and

WHEREAS, if chemical pesticides are misapplied, the risk or damage to people, animals, crops, and the environment can rise to significant proportions; and

WHEREAS, the advancement of technology surrounding the development of new chemical pesticides will increase their usage and consequently increase the risk or damage to people, animals, crops, and the environment; and

WHEREAS, issues of liability and recovery for misapplication if resolved through the courts rather than through trained mediators can require a tremendous commitment of time and resources; and

WHEREAS, agronomists, agricultural commodity groups, commercial chemical sprayers, and the insurance industry are parties that have an interest in resolving disputes arising from misapplication of chemical pesticides through developing a mediation process;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the chemical application industry and develop a method for assessing or determining damage due to misapplication and for resolution of disputes through mediation; 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 614**HOUSE CONCURRENT RESOLUTION NO. 3061**

(Representative Boucher)

STATE AND LOCAL TAX STRUCTURE STUDY

A concurrent resolution directing the Legislative Council to study taxes imposed by state and local governments and the tax structure and balance among the various tax systems in North Dakota to provide a more equitable distribution of tax burdens.

WHEREAS, citizens have expressed concerns about the equitable distribution of the cost of government services and the proper balance among various tax types in North Dakota, including property taxes, corporate and individual income taxes, and sales taxes; and

WHEREAS, legislative responsibility for overseeing the state and local tax system requires thorough study of taxes imposed under authority of state law; and

WHEREAS, it is incumbent upon the Legislative Assembly to seek 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 taxes imposed by state and local governments and the tax structure and balance among the various tax systems in North Dakota to provide a more equitable distribution of tax burdens; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 615**HOUSE CONCURRENT RESOLUTION NO. 3062**
(Representative Boucher)**JUVENILE JUSTICE ALTERNATIVE DISPOSITION
STUDY**

A concurrent resolution directing the Legislative Council to study alternative dispositions, including boot camps, for youth in the juvenile justice system.

WHEREAS, arrests of juveniles have increased 4.5 percent from 1995 to 1996, and arrests of juveniles have increased 45 percent from 1987 to 1996; and

WHEREAS, the majority of offenses have been historically for larceny or theft, liquor law violations, and for being a runaway; and

WHEREAS, youth who have committed nonviolent crimes have a good chance of rehabilitation; and

WHEREAS, there is a need due to the increased numbers of youth in the juvenile justice system for an intermediate dispositional alternative between community placement and long-term detention; and

WHEREAS, the short-term, intensive treatment of youth in boot camps has shown long-term positive change in youth's attitudes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study dispositional alternatives, including boot camps, for youth in the juvenile 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 616**HOUSE CONCURRENT RESOLUTION NO. 3063**

(Representatives Meyer, Fairfield, Mueller)

CROP INSURANCE OPTIONS URGED

A concurrent resolution urging Congress to encourage the formation of new legislative or administrative initiatives that would provide farmers with crop insurance options that offer true revenue or income protection and which add hay or other grazable grasses to the scope of covered commodities, and to encourage the formation of new legislative or administrative initiatives that address the high cost of crop insurance coverage and specifically examine the percentage of farmers' premiums used to support the administration of crop insurance programs.

WHEREAS, farmers in this state and throughout the country have suffered devastating crop losses in recent years; and

WHEREAS, farm families and rural communities have, as a result of the crop losses, suffered an economic downturn similar to the farm crisis of the 1980s; and

WHEREAS, changes in national farm policy mean that farmers must assume more of their own farming risk; and

WHEREAS, shrinking profit margins and increasing risks are leading more farmers to recognize crop insurance as the last remaining safety net that can be tailored to fit their own risk management needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to encourage the formation of new legislative or administrative initiatives that would provide farmers with crop insurance options that offer true revenue or income protection and which add hay or other grazable grasses to the scope of covered commodities, and to encourage the formation of new legislative or administrative initiatives that address the high cost of crop insurance coverage and specifically examine the percentage of farmers' premiums used to support the administration of crop insurance programs; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 1999

CHAPTER 617**HOUSE CONCURRENT RESOLUTION NO. 3064**

(Representatives Metcalf, Belter, Gorder, Herbel)
(Senators Holmberg, Thane)

SCHOOL DISTRICT FUNDING STUDY

A concurrent resolution directing the Legislative Council to study enhanced funding for school districts for quality education and methods of reducing reliance on property taxes for school district funding.

WHEREAS, adequate funding to provide quality elementary and secondary education in this state is a critical concern of the legislative assembly and school districts; and

WHEREAS, there is concern about the high degree of reliance on property tax revenues for education funding and whether it would be more equitable to place more reliance on revenues drawn from other funding sources; and

WHEREAS, many complex issues must be examined to allow an informed decision on the appropriate mix of funding for quality education, mandates imposed on political subdivisions, reduction of property tax burdens, impact of property tax exemptions granted by local subdivisions, and methods of providing an adequate education system to support community growth and economic development;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study enhanced funding for school districts for quality education and methods of reducing reliance on property taxes for school district funding; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 618**HOUSE CONCURRENT RESOLUTION NO. 3067**

(Representatives DeKrey, Delmore)
(Senator W. Stenehjem)

CLERK OF COURT IMPLEMENTATION REVIEW

A concurrent resolution directing the Legislative Council to review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods.

WHEREAS, the Fifty-sixth Legislative Assembly is considering legislation to provide for the delivery of clerk of district court services through alternative means, including state funding; and

WHEREAS, the legislation is intended to ensure the local availability and delivery of clerk of district court services while recognizing the state's responsibility to provide funding as part of the implementation of the unified judicial system contemplated under Article VI of the Constitution of North Dakota; and

WHEREAS, the legislation contemplates a delayed time of taking effect and for transition periods in implementing alternative means of providing clerk of district court services; and

WHEREAS, it is important that the implementation of this legislation be monitored to identify any changes that may be necessary and to ensure that clerk of district court services are provided in a manner that benefits the citizens of this state and the interests of the state judicial system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council review and monitor the implementation of legislation enacted by the Fifty-sixth Legislative Assembly which provides for the delivery of clerk of district court services through state funding and alternative methods; 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 619**HOUSE CONCURRENT RESOLUTION NO. 3068**

(Representatives DeKrey, Delmore, Gulleson)
(Senator W. Stenehjem)

JUDICIAL AND CLERK OF COURT FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of an equitable sharing, between the state and counties, of the costs of providing facilities for the delivery of state-funded judicial and clerk of court services.

WHEREAS, current statutes require the counties to provide adequate chamber, court, and law library quarters, and lights and fuel for state-funded district courts and to provide appropriate facilities for state-funded clerk of court service; and

WHEREAS, since July 1, 1995, the majority of revenue derived from court filing fees and traffic bond forfeitures has been transferred from the counties to the state general fund; and

WHEREAS, there is uncertainty concerning the adequacy of current court-related facilities and the extent to which existing facilities can or should be improved to ensure the delivery of efficient and effective judicial and clerk of court services to the citizens of this state; and

WHEREAS, state and local taxpayers would benefit from the development of a plan, in consultation with the Association of Counties, the Clerk of Court Association, the Association of County Commissioners, and the Supreme Court, which identifies facility requirements and addresses the equitable sharing of costs necessary to provide adequate facilities for the delivery of judicial and clerk of court services;

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 an equitable sharing, between the state and the counties, of the costs of providing facilities for the delivery of state-funded judicial and clerk of court services; and

BE IT FURTHER RESOLVED, that the Legislative Council request and consider any plans developed by the Association of Counties, the Clerk of Court Association, the Association of County Commissioners, and the Supreme Court which address the adequacy of existing court-related facilities, any improvements considered necessary for the delivery of judicial and clerk of court services, and methods of equitably sharing the costs associated with such facilities; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 620**HOUSE CONCURRENT RESOLUTION NO. 3070**

(Representatives Grosz, Dorso)
(Senator G. Nelson)

HEALTH CARE STUDY

A concurrent resolution directing the Legislative Council to study health care in this state relative to access, quality, and cost to determine essential health care services, critical providers, access sites, and geographic, demographic, and economic issues relating to health care including health care insurance.

WHEREAS, the Health Council is responsible for planning and overseeing the State Department of Health and the future of health care in the state; and

WHEREAS, the Legislative Assembly is continually faced with funding issues relating to public employee health benefits and the appropriate care and funding for the Medicaid population and the public at large; and

WHEREAS, the health care delivery system in this state may include overlap and duplication in health care services; and

WHEREAS, continual increases in health care insurance premiums create an economic burden upon the citizens of this state; and

WHEREAS, the State Department of Health has the data management and research capabilities to support studies of health care;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study health care in this state relative to access, quality, and cost to determine essential health care services, critical providers, access sites, and geographic, demographic, and economic issues relating to health care including health care insurance; and

BE IT FURTHER RESOLVED, that the Health Council conduct public hearings throughout the state to elicit the public's perception and needs regarding what health care the public is willing to support and report their findings to the Legislative Council committee 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 621**HOUSE CONCURRENT RESOLUTION NO. 3071**

(Representatives Nowatzki, Fairfield, Nicholas, Tollefson)
(Senators Thane, Tomac)

DAKOTA MAID LOGO LICENSING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of licensing or franchising the "Dakota Maid" logo and trade name of the North Dakota Mill and Elevator Association and promoting the logo on a nationwide basis.

WHEREAS, North Dakota grows hard red spring wheat that is internationally recognized for its properties in bread-making; and

WHEREAS, the "Dakota Maid" logo and trade name of the North Dakota Mill and Elevator Association is recognized in the flour and bread-making industry as synonymous with high quality; and

WHEREAS, it would be beneficial to North Dakota to have a mechanism by which farmers can market unique, high-quality wheat varieties and to have the Mill and Elevator Association expand its sales and profits; and

WHEREAS, any royalties collected from the use of the "Dakota Maid" logo could be returned to North Dakota farmers as a premium for producing specific cultivars of hard red spring wheat that possess the unique milling and baking characteristics which are synonymous with high quality and which are delivered to the North Dakota Mill and Elevator Association on an identity preserved basis;

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 licensing or franchising the "Dakota Maid" logo and trade name of the North Dakota Mill and Elevator Association and promoting the logo on a nationwide basis; 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 622**HOUSE CONCURRENT RESOLUTION NO. 3072**

(Representative L. Thoreson)

**PUBLIC SCHOOL DISCIPLINE ADMINISTRATION
STUDY**

A concurrent resolution directing the Legislative Council to study the state of the law in this state and other states dealing with the administration of discipline in public schools.

WHEREAS, the administration of discipline in public schools is necessary to create a favorable learning environment for students; and

WHEREAS, there has been an increase in public schools of unacceptable and disruptive behavior which is related to a lack of discipline and lack of respect of authority by students; and

WHEREAS, this unacceptable and disruptive behavior leads to a disruption of the educational environment and leads to an inordinate expenditure of human and monetary resources to deal with this behavior;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state of the law in this state and other states dealing with the administration of discipline in public 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 623**HOUSE CONCURRENT RESOLUTION NO. 3073**

(Representatives Aarsvold, Maragos, Poolman)
(Senators DeMers, Schobinger)

FEDERAL RETIREE INCOME TAX DEDUCTION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adjustments to income tax deductions for military and other federal retirees.

WHEREAS, the presence of military and other federal retirees in this state brings many benefits to the state, including a resource pool of skills acquired in a lifetime of public service, stimulation of the state economy, and an exemplary standard of achievement and conduct; and

WHEREAS, although the Legislative Assembly has recognized the benefit of having military and other federal retirees in residence in this state by enacting laws to provide income tax deductions for a portion of military and other federal retirement benefits, the value of these deductions has been eliminated for most taxpayers because they are available only on the long-form income tax return; and

WHEREAS, encouraging military and other federal retirees to remain residents of this state or to become residents of this state would enhance the state's economy and quality of life;

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 adjustments to income tax deductions for military and other federal retirees; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 624**HOUSE CONCURRENT RESOLUTION NO. 3074**

(Representatives DeKrey, Grosz, Gulleson, Weisz)

**NONPROFIT ORGANIZATION PROPERTY
OWNERSHIP STUDY**

A concurrent resolution directing the Legislative Council to study the amount and value of property owned by nonprofit organizations and other tax-exempt entities, including ownership in trust for Indian tribes, in this state and the impact of that ownership on local communities and the economy of this state.

WHEREAS, nonprofit organizations are generally exempt from property taxation and it is necessary to study the effect of that exempt property and other exempt property on the economy and political subdivisions of this state; and

WHEREAS, it is necessary to analyze the effect of ownership of property by tax-exempt entities on communities in North Dakota; and

WHEREAS, it is necessary to establish a catalogue of the acreage and the value of property owned by tax-exempt entities in each county in 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 amount and value of property owned by nonprofit organizations and other tax-exempt entities, including ownership in trust for Indian tribes, in this state and the impact of that ownership on local communities and the economy of this state; 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-seventh Legislative Assembly.

Filed April 2, 1999

CHAPTER 625**HOUSE CONCURRENT RESOLUTION NO. 3075**

(Representatives Sandvig, Delmore, Ekstrom)
(Senators Heitkamp, Thane, Watne)

**DOMESTIC VIOLENCE VICTIM INSURANCE
DISCRIMINATION STUDY**

A concurrent resolution directing the Legislative Council to study insurance discrimination against victims of domestic violence.

WHEREAS, the Fifty-sixth Legislative Assembly adopted House Bill No. 1202 to address the fact that many insurance companies deny victims of domestic violence payment of property and casualty insurance claims arising out of domestic violence; and

WHEREAS, many insurance companies deny victims of domestic violence access to insurance by using domestic violence as an underwriting criterion; and

WHEREAS, victims of domestic violence will stop seeking appropriate and necessary medical treatment, counseling, legal intervention, and other forms of assistance if insurers use information in the victim's medical records to deny insurance; and

WHEREAS, victims of domestic violence will not disclose domestic violence as the cause of a victim's injuries, and health care providers may stop identifying and documenting domestic violence if this documentation puts patients at risk of losing insurance; and

WHEREAS, a legislative study of this issue, including a study of the effectiveness of House Bill No. 1202, may result in recommendations to eliminate insurance discrimination against victims of domestic violence or to reduce the possibility of victims not seeking appropriate and necessary treatment or recovery from insurance;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study insurance discrimination against victims of domestic violence; 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-seventh Legislative Assembly.

Filed April 8, 1999

CHAPTER 626**HOUSE CONCURRENT RESOLUTION NO. 3077**
(Representative Nottestad)**RURAL ALTERNATIVE HIGH SCHOOLS STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing and funding alternative high schools in rural areas.

WHEREAS, the number of students who would benefit from attending an alternative high school is increasing; and

WHEREAS, the Legislative Assembly has provided for the establishment and funding of alternative high school programs in this state; and

WHEREAS, alternative high school programs tend to be located in the more urban, populated school districts; and

WHEREAS, students in the rural, less populated areas of the state should also have the same opportunities to attend an alternative high school;

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 establishing and funding alternative high schools in rural 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 627**HOUSE CONCURRENT RESOLUTION NO. 3078**

(Representatives Monson, Brandenburg, D. Johnson, R. Kelsch)

**EDUCATION SERVICES DELIVERY AND FUNDING
STUDY**

A concurrent resolution directing the Legislative Council to study the equitable delivery of education services to students in this state and methods of accurately calculating and disbursing state funding for education.

WHEREAS, the citizens of this state have long-valued their local systems of elementary and secondary education; and

WHEREAS, the citizens of this state have long-valued the unique features and specific strengths of all their school districts; and

WHEREAS, although some school districts have experienced recent population gains, many others are burdened with rapidly declining student populations; and

WHEREAS, the state has a constitutional duty to provide a uniform system of free public education to all students in the state; and

WHEREAS, a uniform system of free public education must be an equitable system of free public education in terms of both educational opportunity for students and fairness to taxpayers; and

WHEREAS, concerns about equity in education are elevated because of the increased demand for state financial support for school districts; and

WHEREAS, the need for increases in state financial support for education elevates concerns about the manner in which the foundation aid formula is applied and the accuracy of calculations involving state foundation aid payments to school districts;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the equitable delivery of education services to students in this state and methods of accurately calculating and disbursing state funding for education; 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-seventh Legislative Assembly.

Filed March 23, 1999

CHAPTER 628**HOUSE CONCURRENT RESOLUTION NO. 3079**
(Representatives Stefonowicz, Fairfield, Meyer, Solberg, Thorpe)**RURAL SUBDIVISION AND TOWNSHIP
RELATIONSHIP STUDY**

A concurrent resolution directing the Legislative Council to study the relationship of rural subdivisions and townships.

WHEREAS, the establishment and growth of rural subdivisions that are not incorporated as cities sometimes create conflicts with township governments and residents; and

WHEREAS, traditional control and services of township government are affected by the development of a rural subdivision within a township; and

WHEREAS, orderly development of rural subdivisions in a manner that is fair to other township residents is in the best interests of everyone;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the relationship of rural subdivisions and townships; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 629**HOUSE CONCURRENT RESOLUTION NO. 3080**

(Representative Maragos)

AIR AND AMTRAK SERVICE STUDY

A concurrent resolution directing the Legislative Council to study the provision of air service and Amtrak service in this state.

WHEREAS, travel is required in today's business world to reach the major financial and business centers in this country; and

WHEREAS, a passenger railway service provides a scenic view of this state to tourists and a schedule that provides for a stop in this state for a few days would aid tourism; and

WHEREAS, this state has limited air service and is dependent upon a few airlines for air service; and

WHEREAS, air service was disrupted in 1998 by a strike by employees of the major airline that serves all of the major cities in this state;

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 air service and Amtrak service 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-seventh Legislative Assembly.

Filed March 31, 1999

SENATE CONCURRENT RESOLUTIONS

CHAPTER 630

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)
(Budget Section)

BLOCK GRANT HEARINGS

A concurrent resolution authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981, creating the community services block grant program; and

WHEREAS, the Legislative Assembly is required to conduct public hearings; and

WHEREAS, the Appropriations Committees have met the public hearing requirement for community services block grant moneys expected for the next biennium by the Office of Management and Budget; and

WHEREAS, the Fifty-sixth Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 2000 and thus its public hearing responsibility for grants not approved by the Fifty-sixth Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Office of Management and Budget appropriations bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2001; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of additional block 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 authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-sixth Legislative Assembly through September 30, 2001, and the Budget Section may provide public notice and hold the hearings authorized by this resolution using the methods and procedures it deems appropriate.

Filed March 4, 1999

CHAPTER 631**SENATE CONCURRENT RESOLUTION NO. 4003**

(Legislative Council)

(Budget Committee on Human Services)

**DHS STRUCTURE AND BUDGET PRESENTATION
IMPROVEMENT URGED**

A concurrent resolution urging the Department of Human Services to implement recommendations to improve its administrative structure and enhance its budget presentation methods and to report to the Legislative Council and directing the Legislative Council to monitor the implementation of the recommendations.

WHEREAS, during the 1997-98 interim, the Legislative Council's Budget Committee on Human Services studied the Department of Human Services, the appropriateness of a consolidated Department of Human Services in light of significant federal funding, society, and technology changes, and the changes necessary to enhance program effectiveness, legislative understanding, appropriation analysis and development, and oversight of the department; and

WHEREAS, the committee held meetings in Fargo, Grand Forks, Minot, and Bismarck to receive public input and testimony from private providers and human service personnel; and

WHEREAS, a consultant under contract with the Legislative Council made recommendations to improve the department's administrative structure; to enhance budget development, legislative and public understanding of departmental programs and budgets, needs assessment, and client satisfaction; to establish new and innovative methods of providing services; and to improve departmental internal and external communications and state, county, and regional relationships;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly recommends that the Department of Human Services develop a continuous and systematic planning process, or a strategic business plan, that includes the identification of department goals and objectives, client service needs, and strategies for service delivery; monitors performance; adjusts service delivery to provide priority client services in a cost-effective and efficient manner; and includes consideration of the following:

1. An organizational structure that reduces the executive director's span of control and improves coordination, communications, and control of staff and field services;
2. Improvement of the budget presentation to the Legislative Assembly by using "budget in brief" technology-assisted presentations, maximum use of available software, and information on an Internet web site which includes a review of the Governor's budget guidelines, identification of department goals and significant changes from the previous biennium, trend and projection analysis, executive summary of expenditures and

- revenues, and identification of specific initiatives, new programs/major modifications to existing programs, and programs and services recommended for elimination;
3. Development and use of an executive decision system that provides summary information to management and policymakers, allowing access to the information from an Internet web site or data warehousing;
 4. Identification of core and essential services, information to legislative committees, and dissemination of this information to the public;
 5. Improvement of county and private sector collaboration by emphasizing and searching for ways to involve the counties and the private sector in planning and implementing programs;
 6. Improvement of private provider relations by requiring department staff to explain payment rate calculations and audit findings to providers and by providing basic information and new rules on the department's Internet web site;
 7. Review of inspection and licensing requirements for programs and facilities to provide for consistent administration of programs, decentralizing of inspections, and retaining centralized standard setting and quality control authority;
 8. Implementation of a strategic planning, evaluation, and review capability that may include:
 - a. A budgeting, planning, and evaluation division, under the control of a newly created assistant director position, which includes quality control and research and statistics functions and provides through a new position that could be filled on a temporary basis from university personnel long-range vision and strategic planning;
 - b. An ombudsman/troubleshooter position and an enhanced public information function to provide information regarding department programs and serve as an informal appeals and complaint resolution function; and
 - c. An information resource management unit, which includes the technical eligibility computer system (TECS), to improve the quality of public and internal information;
 9. Development of an information technology master plan that supports department goals and objectives and the systematic planning process and prioritizes technology needs;
 10. Improvement of client satisfaction survey methodology and encouragement of counties and private providers to conduct client satisfaction surveys;
 11. Consolidation of the medical services and public assistance divisions, including the training, education, employment, and management (TEEM) function, into a financial and medical assistance division and the consolidation of the finance and office services and centralized collections in a management support division;

12. Merging children's special health services into the children and family services division;
13. Key person succession planning by developing department staff through the possible use of "career ladders", training incentives, and performance bonuses or obtaining executives "on detail" from the private sector and universities;
14. Review of and recommendations for implementation of other states' innovative methods of service provision;
15. Review of and recommendations regarding the Medicaid spending reduction techniques identified by the consultant and their applicability to North Dakota;
16. Child protection fund shift initiatives that are based upon shifting eligible "kinship" foster care from temporary assistance for needy families (TANF) child-only grants to foster care payments;
17. Incentives for public/private collaborative operation of integrated service centers at the district level, incorporating managed care techniques, and including a pilot project with performance goals; and
18. Supporting and assisting in the implementation of a performance management system that includes measurement criteria that assist in setting department goals, allocate and prioritize resources, and provide for a reporting on the success in meeting goals; and

BE IT FURTHER RESOLVED, that the Department of Human Services be requested to report to the Legislative Council during the 1999-2000 interim on the department's progress in implementing the recommendations and that an interim legislative committee 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 632**SENATE CONCURRENT RESOLUTION NO. 4004**

(Legislative Council)
(Budget Committee on Long-Term Care)

LONG-TERM CARE CAPACITY STUDY

A concurrent resolution directing the Legislative Council to study the possibility of creating an incentive package to assist rural communities and nursing facilities in closing or significantly reducing bed capacity and providing alternative long-term care services.

WHEREAS, North Dakota has 75.05 nursing facility beds per 1,000 elderly (age 65 and over) while the national average is fewer than 50; and

WHEREAS, North Dakota institutionalizes about 10.3 percent of its elderly population, the highest percentage in the United States; and

WHEREAS, there were 7,031 nursing facility beds available during 1996, of which 6,748 or 95.97 percent were occupied and 1,275 basic care beds available during the three-month period beginning January 1997 and ending March 1997, of which 1,061 or 83.22 percent were occupied; and

WHEREAS, Medicaid recipients occupied 56.59 percent of the nursing facility beds during 1996 and basic care assistance recipients occupied 64 percent of the basic care beds during the three-month period beginning January 1997 and ending March 1997; and

WHEREAS, the closure of a facility in a rural community can have a significant effect on the entire community similar to the loss of other local businesses, schools, hospitals, or churches; and

WHEREAS, the Task Force on Long-Term Care Planning recognizes that assistance may be needed for communities when a facility chooses to close or reduce bed capacity; and

WHEREAS, facilities in rural communities which are experiencing decreased occupancy and staffing problems usually do not have the necessary resources to develop alternatives to institutional care; and

WHEREAS, the Task Force on Long-Term Care Planning concluded that incentives and other forms of assistance should be made available to enable facilities to make the transition toward closing or to providing institutional services to fewer residents; and

WHEREAS, incentives could range from a flat payment for each bed delicensed to grants and subsidized loans for developing alternative services and involve the resources and expertise from state agencies, including the State Department of Health, Department of Human Services, Bank of North Dakota, Municipal Bond Bank, and the Department of Economic Development and Finance;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the possibility of creating an incentive package to assist rural communities and nursing facilities in closing or significantly reducing bed capacity and providing alternative long-term care 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-seventh Legislative Assembly.

Filed March 2, 1999

CHAPTER 633**SENATE CONCURRENT RESOLUTION NO. 4005**

(Legislative Council)
(Legislative Management Committee)

**LEGISLATIVE REDISTRICTING LAW AND
TECHNOLOGY STUDY**

A concurrent resolution directing the Legislative Council to study the state of the law and technology with respect to legislative redistricting.

WHEREAS, legislative redistricting is a function of the Legislative Assembly;
and

WHEREAS, the results of the 2000 federal decennial census will be available to the Legislative Assembly for redistricting purposes in 2001; and

WHEREAS, substantial study may be required to determine the applicable constitutional requirements for a valid legislative redistricting plan; and

WHEREAS, there have been substantial improvements in computer technology since the 1991 redistricting;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state of the law and technology with respect to legislative redistricting, including federal and state constitutional requirements based on case law, any state statutory redistricting requirements, and technological improvements that may be available to assist the Legislative Assembly with its redistricting responsibilities; 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-seventh Legislative Assembly.

Filed March 16, 1999

CHAPTER 634**SENATE CONCURRENT RESOLUTION NO. 4006**

(Senators Bowman, Andrist, Christmann, Heitkamp)
(Representatives Kempenich, Meyer)

STATE AGENCY TRANSFER TO RURAL AREAS STUDY

A concurrent resolution directing the Legislative Council to study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas.

WHEREAS, the state of North Dakota rents office space for several of its agencies and institutions; and

WHEREAS, the state should periodically evaluate office space needs and the cost of renting office space; and

WHEREAS, technological advances allow employees to conduct their work from offices outside the capitol building, including offices in rural areas where building rents may be less expensive;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural 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-seventh Legislative Assembly.

Filed March 2, 1999

CHAPTER 635**SENATE CONCURRENT RESOLUTION NO. 4008**

(Senator G. Nelson)
(Representative Dorso)

**TOBACCO SETTLEMENT RECOUPMENT
PROHIBITION URGED**

A concurrent resolution urging Congress and the Clinton Administration to recognize state interests and enact legislation that would prohibit the federal Department of Health and Human Services from recouping the tobacco settlement funds as third-party recoveries under Medicaid law.

WHEREAS, in November 1998, 46 states agreed to a historic settlement with the tobacco industry, which ended a four-year battle with the industry over treatment costs states have incurred for smoking-related illnesses; and

WHEREAS, the 46 states could receive up to \$196 billion over a 25-year period, including disbursements totaling over \$717 million to the state of North Dakota; and

WHEREAS, the Master Settlement Agreement does not restrict or earmark the settlement, therefore the general belief is that the funds may be appropriated according to state law; and

WHEREAS, the decision for states now is how to best use the money; and

WHEREAS, the federal Department of Health and Human Services contends that existing Medicaid law (Section 1903(d) of the Social Security Act) compels it to recover its share of third-party payments, collected by states on behalf of Medicaid clients, and argues further that state tobacco settlement funds are third-party recoveries under the provisions of the Medicaid statute;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States and the Clinton Administration to recognize state interests and enact legislation that would prohibit the federal Department of Health and Human Services from recouping the tobacco settlement funds as third-party recoveries under Medicaid law; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Department of Health and Human Services and to each member of the North Dakota Congressional Delegation.

Filed February 2, 1999

CHAPTER 636**SENATE CONCURRENT RESOLUTION NO. 4014**

(Senator W. Stenehjem)
(Representative DeKrey)

**INDIGENT DEFENDANT AND PUBLIC DEFENDER
SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system.

WHEREAS, increased criminal penalties, mandatory sentences, and creation of new criminal offenses contribute to the increased cost of enforcing such laws, including the costs of providing legal representation for indigent criminal defendants; and

WHEREAS, costs associated with the indigent defense contract system administered by the judicial branch continue to increase in greater proportion than most other costs of the judicial branch; and

WHEREAS, the current indigent defense contract system poses troubling, conflict-related issues concerning judge involvement in deciding when criminal defense expenses, such as expert witnesses, should be allowed while also presiding in cases involving indigent criminal defendants; and

WHEREAS, the Legislative Assembly last considered the establishment of a public defender system during the 1973 and 1975 legislative sessions and the dynamics and requirements regarding criminal defense services for indigents have changed considerably since that time;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 637**SENATE CONCURRENT RESOLUTION NO. 4015**

(Senators Nething, B. Stenehjem)
(Representative Carlisle)

ADULT CORRECTIONAL SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws.

WHEREAS, the Legislative Council has not conducted a comprehensive study of the functions, responsibilities, funding, and operation of the state's adult correctional system since the 1977-78 interim; and

WHEREAS, the Legislative Council has not conducted a comprehensive study of adult correctional facility needs since the 1979-80 interim; and

WHEREAS, the prison population in North Dakota has increased by over 60 percent from 1993 to 1998; and

WHEREAS, state general fund appropriations to the Department of Corrections and Rehabilitation have increased by over 50 percent from the 1993-95 biennium to the 1997-99 biennium; and

WHEREAS, the number of adult drug offenders incarcerated in North Dakota has increased by over 460 percent from 1993 to 1998; and

WHEREAS, the Legislative Assembly has enacted numerous changes to sentencing laws in North Dakota since 1993; and

WHEREAS, treatment and other programs that provide alternatives to incarceration may reduce the number of inmates and reduce recidivism;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws; 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-seventh Legislative Assembly.

Filed March 16, 1999

CHAPTER 638**SENATE CONCURRENT RESOLUTION NO. 4018**

(Senators Kroeplin, Krauter, T. Mathern)
(Representatives Grumbo, Kerzman, Lemieux)

**MEAT AND GRAIN INDUSTRY CONCENTRATION
REVIEW URGED**

A concurrent resolution urging Congress to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably.

WHEREAS, the three largest meat packers, IBP, Cargill's Excel Corporation, and Con Agra's Monfort, control almost 80 percent of the cattle slaughter market; and

WHEREAS, the pending merger of Cargill and Continental Grain company would result in a single entity controlling over 40 percent of all United States corn exports, 33 percent of all soybean exports, and at least 20 percent of all wheat exports; and

WHEREAS, the owners of numerous small to medium size farms and ranches are being driven out of business by anticompetitive forces that control the markets and restrict farm income; and

WHEREAS, concentration and consolidation in the meat and grain industries drives out competition in smaller local markets and has far-reaching economic implications for consumers as well as agricultural producers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1999

CHAPTER 639**SENATE CONCURRENT RESOLUTION NO. 4019**

(Senator Bowman)

**MOTOR VEHICLE SERVICES PLACEMENT WITH
COUNTY TREASURER STUDY**

A concurrent resolution directing the Legislative Council to study the placement of motor vehicle license, registration, title, and excise tax collection services in the treasurer's office of each county in this state.

WHEREAS, motor vehicle license, registration, title, and excise tax collection services are a state function administered by the department of transportation; and

WHEREAS, the ownership and operation of motor vehicles is pervasive and essential to the lives and livelihoods of the residents of this state; and

WHEREAS, residents may have to travel in excess of fifty miles to obtain motor vehicle license and registration services; and

WHEREAS, local administration of motor vehicle services would provide income to the counties, disperse jobs throughout this state, and provide efficient and convenient services to the residents of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the placement of motor vehicle license, registration, title, and excise tax collection services in the treasurer's office of each county in this state; and

BE IT FURTHER RESOLVED, that the study include consideration of providing for county placement on a pilot project basis; 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 640**SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators Krauter, T. Mathern, Thompson)
(Representatives Lundgren, Metcalf, Nowatzki)

AGRICULTURAL REFORMS URGED

A concurrent resolution urging Congress to assist farmers by removing or restricting the use of trade sanctions as they apply to agricultural products, by taking advantage of the export enhancement program, by removing the cap on marketing loans, and by reforming crop insurance so that farmers experiencing multiyear disasters could have access to adequate coverage.

WHEREAS, farm families and rural communities are suffering an economic downturn similar to the farm crisis of the 1980s; and

WHEREAS, farmers in this state have had to contend with prolonged periods of disastrous weather and crop disease; and

WHEREAS, farmers in this state are experiencing declining crop insurance coverage, thereby further reducing their ability to mitigate against disasters; and

WHEREAS, the 1996 farm bill replaced the previous system of farm income protection with a set of fixed, but declining, payments unrelated to commodity prices and capped commodity marketing loan rates; and

WHEREAS, removing the cap on the marketing loans and extending the loan terms would provide a way to channel much-needed financial resources to farmers, would protect farm prices without distorting the market, and would provide farmers with market flexibility; and

WHEREAS, prohibiting the use of unilateral economic sanctions that hinder the export of agricultural products would reduce financial harm to farmers in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to assist farmers by removing or restricting the use of trade sanctions as they apply to agricultural products, by taking advantage of the export enhancement program, by removing the cap on marketing loans, and by reforming crop insurance so that farmers experiencing multiyear disasters could have access to adequate coverage; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1999

CHAPTER 641**SENATE CONCURRENT RESOLUTION NO. 4021**

(Senators Krauter, Bercier, Kelsh, Kinnoin, T. Mathern)
(Representative Fairfield)

NAFTA RENEGOTIATION URGED

A concurrent resolution urging Congress to renegotiate the North American Free Trade Agreement and address tariff equalization, increased market access, sanitary and phytosanitary disputes, and methods to facilitate and shorten dispute resolution procedures.

WHEREAS, the North American Free Trade Agreement created the world's largest free trade zone with 360 million consumers; and

WHEREAS, when the North American Free Trade Agreement was to be enacted, our farmers and ranchers were promised a new golden age of expanding trade opportunities, vast new markets for their products and capital and investment in their communities, protection from any potentially adverse effects that might be generated by the North American Free Trade Agreement through safeguard tariff provisions, and provisional relief from dumping actions through adjudication from the International Trade Commission; and

WHEREAS, safeguard tariff provisions have not stopped the flood of Canadian and Mexican agricultural products into the United States markets, and the International Trade Commission has failed to conduct the monitoring of trade conditions as it had been directed to do by the North American Free Trade Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to renegotiate the North American Free Trade Agreement and address tariff equalization, increased market access, sanitary and phytosanitary disputes, methods to facilitate and shorten dispute resolution procedures; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed April 13, 1999

CHAPTER 642**SENATE CONCURRENT RESOLUTION NO. 4024**

(Senators T. Mathern, G. Nelson)
(Representatives Boucher, Dorso)

**SAKAKAWEA STATUE FOR NATIONAL STATUARY
HALL DESIGNATION**

A concurrent resolution designating Sakakawea to be honored and memorialized with a statue in the National Statuary Hall in the United States Capitol in Washington, D.C.

WHEREAS, Sakakawea was a traveler and guide, a translator, a diplomat, and a wife and mother; and

WHEREAS, Sakakawea was an Indian woman guide for Meriwether Lewis and William Clark and Sakakawea's indomitable spirit was a deciding factor in the success of Lewis and Clark's two-year expedition to the northwest quadrant of the United States; and

WHEREAS, William Clark wrote in 1806 that Sakakawea deserved a greater reward for her attention and services on the expedition than he had in his power to give her; and

WHEREAS, Sakakawea is a legend of truly historic dimensions who lived in what would later become North Dakota and who made a lasting contribution through her courage and resourcefulness; and

WHEREAS, Sakakawea's traits - strength, courage, a generous heart, and pioneering spirit - have been an essential part of the character found in North Dakotans, thereby representing the best of who we are and why we will always persevere;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly designate Sakakawea to be honored and memorialized with a statue in the National Statuary Hall in the United States Capitol in Washington, D.C.; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of each Indian tribe in this state, to each member of the North Dakota Congressional Delegation, and to the President of the Senate and the Speaker of the House of Representatives of the United States Congress.

Filed March 18, 1999

CHAPTER 643**SENATE CONCURRENT RESOLUTION NO. 4025**

(Senators Lyson, Kelsh, Wanzek)
(Representatives Drovdal, Rennerfeldt, Solberg)

FARM SERVICE AGENCY ANALYSIS URGED

A concurrent resolution urging Congress to analyze the operating environment of the Farm Service Agency and ensure that attempts at efficiency recognize customer needs and expectations.

WHEREAS, the Secretary of Agriculture has required that there be significant reductions in the United States Department of Agriculture staff at the national, state, and local levels; and

WHEREAS, between 1993 and 1996, federal staff in Farm Service Agency offices was reduced by 16 percent and county staff was reduced by 15 percent; and

WHEREAS, before 1993, the Farm Service Agency offices had 14,953 nonfederal staff, and by the year 2002, there will be only 4,879 nonfederal staff for county offices, or a reduction of 66 percent; and

WHEREAS, the decline in staff is greater than the anticipated decline in workload; and

WHEREAS, in seeking efficiencies, the Secretary of Agriculture has determined that it is preferable to have fewer and larger offices that allow for more specialized services and greater economies of scale; and

WHEREAS, this state has been notified of the intention to maintain only three guaranteed loanmaking and servicing centers - one in Fargo, one in Minot, and one in Bismarck; and

WHEREAS, this proposed organizational plan must consider the unique demographics of this state to be efficient and practicable for our citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to analyze the operating environment of the Farm Service Agency and ensure that attempts at efficiency recognize customer needs and expectations; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed March 19, 1999

CHAPTER 644**SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators T. Mathern, Heitkamp, G. Nelson)
(Representatives Boucher, Dorso)

**DAKOTA WATER RESOURCES ACT ENACTMENT
URGED**

A concurrent resolution urging Congress to enact the Dakota Water Resources Act.

WHEREAS, North Dakota lost more than 500,000 acres of valuable river bottom lands as a result of construction of the Missouri River reservoirs under the federal Flood Control Act of 1944, causing an annual loss of millions of dollars in economic activity as well as other serious impacts to individuals, political subdivisions, and the state's Indian Nations; and

WHEREAS, operation of the Pick-Sloan Missouri River dams has caused extensive damage and erosion to the remaining riverbanks and sediment buildup in areas of the upper reaches of the Oahe and Garrison reservoirs; and

WHEREAS, North Dakota was assured by Congress in the federal Flood Control Act of 1944 that the loss of this valuable land and economic return would be offset by completion of the Garrison Diversion Unit; and

WHEREAS, project beneficiaries have not realized the promise of the Garrison Diversion Unit; and

WHEREAS, construction of the Garrison Diversion Unit has been delayed numerous times with construction costs increasing and the remaining benefits deferred with each delay; and

WHEREAS, the Red River Basin needs a dependable supply of water for the cities of Fargo and Grand Forks, smaller communities, rural water systems, industry, agricultural processing, manufacturing, and other purposes, and to protect and enhance the economic stability and quality of life for the growing population of the Red River Basin; and

WHEREAS, failure to provide long-term water supply and management across North Dakota will jeopardize future economic opportunities dependent on water, including industry, agricultural processing, manufacturing, municipal growth, recreation, and fish and wildlife, and will adversely affect the entire state; and

WHEREAS, primary sources of water for many communities across North Dakota are unsafe and of poor quality and a safe, reliable supply of water is necessary to preserve and improve the quality of life in rural North Dakota; with these supplies being provided by projects such as the Southwest Water Pipeline and the Northwest Area Water Supply Project, as well as other systems now being developed to meet water supply needs; and

WHEREAS, the Dakota Water Resources Act will identify the most appropriate method to deliver a safe, reliable, and affordable supply of water to

eastern North Dakota to address the significant water needs of the Red River Valley; and

WHEREAS, the Dakota Water Resources Act has received broad support from the state's Indian Nations and communities and organizations across North Dakota in testimony presented in hearings before the United States Senate and the United States House of Representatives;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to enact the Dakota Water Resources Act; and

BE IT FURTHER RESOLVED, that the Legislative Assembly supports the efforts of the Governor, the Congressional Delegation, legislative leaders, tribal chairmen, and others who worked together with other interested parties to reach consensus on legislation to complete the Garrison Diversion Unit Project; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges prompt enactment of the Dakota Water Resources Act to achieve the goal of improving the long-term water supply of North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, the Secretary of the Interior, and each member of the North Dakota Congressional Delegation.

Filed March 19, 1999

CHAPTER 645**SENATE CONCURRENT RESOLUTION NO. 4027**

(Senators Tomac, Christmann, Freborg, Kilzer)
(Representatives Grosz, Mahoney)

MISSOURI RIVER ISSUES STUDY

A concurrent resolution directing the Legislative Council to study issues related to the Missouri River in North Dakota.

WHEREAS, the Flood Control Act of 1944, as amended, assured benefits to all 10 states within the Missouri River basin under a control and management program that came to be commonly known as the Pick-Sloan Project; and

WHEREAS, the Congress has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan Project; and

WHEREAS, the United States Army Corps of Engineers stated in its final report to Congress dated December 1981 concerning the 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 that 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 United States Army Corps of Engineers' pronouncements, endangered 6,000 acres of land containing 150 homes, industrial development, and valuable farmland around Lake Oahe; and in the headwaters area of Lake Sakakawea, the delta is endangering the Buford-Trenton irrigation district, the water intake for the city of Williston, and many acres of valuable farmland; 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 the Fort Peck Dam in Montana and Lake Sakakawea; and

WHEREAS, the Missouri River will continue to change without additional bank stabilization; and

WHEREAS, destructive bank erosion continues when high winter water releases for power generation occur;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study issues related to the Missouri River in North Dakota; and

BE IT FURTHER RESOLVED, that the study include an examination of the Pick-Sloan Missouri Basin program, the United States Army Corps of Engineers' master plan, land and natural resource issues, water management, bank stabilization, land use, and development of a long-range vision for the Missouri River in North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council in conducting the study seek input from the Missouri River Coordinated Resource Management Program and the Corps of Engineers; 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-seventh Legislative Assembly.

Filed March 31, 1999

CHAPTER 646**SENATE CONCURRENT RESOLUTION NO. 4028**

(Senators Tomac, Christmann, Freborg, Kilzer)
(Representatives Grosz, Mahoney)

PICK-SLOAN MASTER MANUAL REVISIONS URGED

A concurrent resolution urging the United States Army Corps of Engineers to include provisions for the protection of recreation, municipal, industrial, irrigation, and other interests on the Missouri River in North Dakota in developing a revised master manual for the future operation of the Pick-Sloan Project.

WHEREAS, the Flood Control Act of 1944, as amended, assured benefits to all 10 states within the Missouri River Basin under a control and management program that came to be commonly known as the Pick-Sloan Project; 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 Project; and

WHEREAS, the Pick-Sloan Project provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states lying upstream from these states, and by channelizing the Missouri River from Sioux City, Iowa, to St. Louis, Missouri, at federal expense; and

WHEREAS, the Pick-Sloan Project 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 Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in \$16.7 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, under the Pick-Sloan Project, North Dakota has sacrificed over 550,000 acres of land, which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

WHEREAS, the United States Army Corps of Engineers is now in the process of revising its master manual for the operation of the entire Pick-Sloan Project in future years; and

WHEREAS, the construction of the Pick-Sloan Project has divided the Missouri River in North Dakota into four distinct regions, namely, the Missouri River reach above Williston, Lake Sakakawea, the Missouri River reach from Garrison Dam to the headwaters of Lake Oahe, and Lake Oahe; and

WHEREAS, as the recreation industry on the Missouri River mainstem in North Dakota, which has developed into a \$70 million per year industry, suffered severely when the United States Army Corps of Engineers allowed lake levels to drop drastically during the drought of the late 1980s and the early 1990s; and

WHEREAS, the riverbanks in the Garrison Dam to Oahe Reservoir reach consist of ancient floodplain deposits that have been and will be severely eroded with great loss of valuable land whenever high waterflows are released from Garrison Dam; and

WHEREAS, the irrigators, fishermen, boaters, industrial and municipal water intakes, dredged channels, and marinas have all utilized the moderate summer river levels of the Garrison to Oahe reach both before and after the construction of the Garrison Dam; and

WHEREAS, the United States Army Corps of Engineers is also proposing very low water releases during the summer to allow endangered shore birds to nest, which will seriously affect many irrigators, recreation users, water intakes, dredged channels, and marinas;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly requests the United States Army Corps of Engineers to respect the large sacrifice North Dakota has made in order that the Pick-Sloan Project could be built; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers, in its new master manual, provide for conservation of water to enhance recreation, power generation, and the total economic benefits of the Pick-Sloan Project; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers, in its master manual, delay any unnecessary high water releases on the free-flowing reaches of the Missouri River, which cause the unnecessary loss of valuable land and an increase in flood damage, until such time when the riverbanks are protected; and

BE IT FURTHER RESOLVED, that the United States Army Corps of Engineers more evenly balance the needs of endangered species in the Upper Missouri River Basin with the requirements for water supply, the reduction of bank erosion, recreation, and flood control in the free-flowing stretches of the Missouri River; and

BE IT FURTHER RESOLVED, that the Governor, members of the North Dakota Congressional Delegation, the State Engineer and staff, Director of the Game and Fish Department and staff, and many others be commended for their efforts to date and be urged to continue to work diligently at the local and national levels to influence the United States Army Corps of Engineers to adopt a master manual for the future operation of the Missouri River that is acceptable to all areas and interests on the Missouri River in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Division Commander of the Missouri River Division of the United States Army Corps of Engineers in order to be part of the public record for the Missouri River Master Manual Draft Environmental Impact Statement; the Secretary of the Army; the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; each member of the State Water Commission; and each member of the North Dakota, South Dakota, Wyoming, and Montana Congressional Delegations.

Filed March 19, 1999

CHAPTER 647**SENATE CONCURRENT RESOLUTION NO. 4029**

(Senators Tomac, Andrist)

REFUGE REVENUE FULL PAYMENTS URGED

A concurrent resolution urging the United States Fish and Wildlife Service and the United States Department of the Interior to budget for and make full entitlement payments under the refuge revenue sharing program.

WHEREAS, the United States Fish and Wildlife Service manages 62 national wildlife refuges in North Dakota; and

WHEREAS, North Dakota has more national wildlife refuges located within its borders than does any other state; and

WHEREAS, the United States Fish and Wildlife Service owns and manages approximately 210,000 acres of wildlife refuges in fee and 250,000 acres of waterfowl production areas in fee in North Dakota; and

WHEREAS, North Dakota recognizes the value of these publicly owned lands as wildlife habitat and for wildlife dependent recreation; and

WHEREAS, the United States Fish and Wildlife Service refuge revenue sharing program payments to counties have steadily decreased from 100 percent of entitlement in 1980 to approximately 66 percent of entitlement in 1998; and

WHEREAS, the United States Fish and Wildlife Service requested funding for a full entitlement in 1998, but the amount of the entitlement was reduced by the Department of the Interior; and

WHEREAS, the Congress of the United States has not budgeted for full entitlement of the refuge revenue sharing program since 1980; and

WHEREAS, the deficit in refuge revenue sharing program payments represents a real economic hardship to many counties and citizens in North Dakota; and

WHEREAS, the difference between full entitlement and actual payments made to counties in North Dakota for 1998 was approximately \$224,000; and

WHEREAS, local concerns over the deficit in refuge revenue sharing program payments creates opposition to United States Fish and Wildlife Service land acquisition, land management activities, and other Fish and Wildlife Service programs; and

WHEREAS, state agencies such as the North Dakota Game and Fish Department and organizations such as the North Dakota Wetlands Trust and the Nature Conservancy, which pay actual taxes on the lands they own or manage, suffer criticism of and opposition to their programs as the result of concerns over the refuge revenue sharing program deficit; and

WHEREAS, it would be in the best interests of wildlife conservation, county government, local entities, landowners, and outdoor recreationists if the United States Fish and Wildlife Service made full refuge revenue sharing program payments;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the United States Fish and Wildlife Service and the United States Department of the Interior to budget for and make full entitlement payments under the refuge revenue sharing program; and

BE IT FURTHER RESOLVED, that the North Dakota Legislative Assembly urges the North Dakota Congressional Delegation to seek and support appropriations providing full entitlement payments for the refuge revenue sharing program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the director of the United States Fish and Wildlife Service, the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed April 13, 1999

CHAPTER 648**SENATE CONCURRENT RESOLUTION NO. 4030**

(Senator G. Nelson)
(Representative Dorso)

INDUSTRIAL COMMISSION STUDY

A concurrent resolution directing the Legislative Council to study the management responsibilities of the Industrial Commission, the mission and location of each entity within and under the direction of the Industrial Commission, the membership of the Industrial Commission, and the voting structure of the Industrial Commission.

WHEREAS, the Industrial Commission is responsible for managing the Bank of North Dakota and the North Dakota Mill and Elevator Association; and

WHEREAS, the Industrial Commission also directs the operation of the Municipal Bond Bank, the North Dakota Housing Finance Agency, the Oil and Gas Division, the Geological Survey, the North Dakota Building Authority, and the Lignite Research Council; and

WHEREAS, the entities under the direction of the Industrial Commission are diverse in purpose and involve the supervision and expenditure of hundreds of millions of dollars in state funds; and

WHEREAS, the Governor, Attorney General, and Agriculture Commissioner each have varied responsibilities as members of the Industrial Commission; and

WHEREAS, legislation throughout the years has raised questions regarding the management responsibilities, membership, and voting structure of the commission; and

WHEREAS, because the Attorney General serves the dual roles of member of the Industrial Commission and legal counsel for the commission, the responsibilities of these roles may conflict at times;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the management responsibilities of the Industrial Commission, the mission and location of each entity within and under the direction of the Industrial Commission, the membership of the Industrial Commission, and the voting structure of 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 649**SENATE CONCURRENT RESOLUTION NO. 4031**

(Senators Cook, Flakoll, Kelsh, O'Connell, Redlin, Wanzek)

SPECIAL EDUCATION SERVICE FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the method by which the state funds special education services.

WHEREAS, Public Law 94-142 requires that all children with disabilities have available to them a free appropriate public education; and

WHEREAS, Public Law 94-142 requires that a child with disabilities be educated in the least restrictive environment; and

WHEREAS, Public Law 94-142 requires that a child with disabilities 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 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, funding by the Legislative Assembly for special education has increased from \$24,176,529 for the 1987-89 biennium to \$40,550,000 for the 1997-99 biennium; and

WHEREAS, many urban school districts are experiencing a significant increase in special education expenditures as families relocate to obtain the best available services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the method by which the state funds special education 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 650**SENATE CONCURRENT RESOLUTION NO. 4032**

(Senators W. Stenehjem, T. Mathern, G. Nelson)
(Representatives Boucher, Dorso)

FAMILY LAW STUDY

A concurrent resolution directing the Legislative Council to study the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods.

WHEREAS, more than half of all civil 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 existing judicial system provides for an adversarial proceeding for domestic relations cases which often compounds the negative impact of family dissolutions; and

WHEREAS, constituents have expressed broad-based concerns regarding the existing family law system; and

WHEREAS, the statutes governing domestic relations are in need of updating and coordination; and

WHEREAS, the Joint Family Law Task Force of the State Bar Association has considerable expertise and knowledge of court procedures and alternative systems in North Dakota and in other jurisdictions; and

WHEREAS, the Joint Family Law Task Force of the State Bar Association has offered its assistance in conducting the study;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the family law process in North Dakota with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council consider conducting meetings with the Joint Family Law Task Force of the State Bar Association; 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-seventh Legislative Assembly.

Filed March 16, 1999

CHAPTER 651**SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Krauter, Bowman, Lyson)
(Representatives Froelich, Kempenich, Lundgren)

OUTMIGRATION STUDY

A concurrent resolution directing the Legislative Council to study outmigration of North Dakota residents.

WHEREAS, between 1990 and 1997, fourteen of North Dakota's counties have experienced a decrease in population of over 10 percent; and

WHEREAS, the United States Census Bureau estimates that between July 1, 1997, and July 1, 1998, North Dakota's population decreased by over 2,700, which translated into a -.4 percent decrease, the largest percentage decrease among the 50 states; and

WHEREAS, North Dakota's neighboring states have experienced increases in population between 1990 and 1998 ranging from approximately six to 10 percent;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study outmigration of North Dakota residents; 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-seventh Legislative Assembly.

Filed April 16, 1999

CHAPTER 652**SENATE CONCURRENT RESOLUTION NO. 4034**

(Senators Kroeplin, Klein, Tomac)
(Representatives Aarsvold, Brandenburg, Nicholas)

FARM COOPERATIVE STRUCTURE STUDY

A concurrent resolution directing the Legislative Council to study the farm cooperative business structure to determine how it may be used to expand dairy and livestock production to enhance rural economic development.

WHEREAS, North Dakota's rural population reached its peak in the decade of the 1920s and has been on a continuous decline and is still declining; and

WHEREAS, North Dakota ranks fourth in the nation in the percentage of economic base derived from agriculture at thirty-eight percent; and

WHEREAS, twenty-five percent of North Dakota's population is employed directly by agriculture or in an agriculture-related business, and the state must recognize that the health of the agricultural economy cannot be left to chance; and

WHEREAS, livestock production annually generates about ninety million dollars in direct impact to the North Dakota economy; and

WHEREAS, North Dakota has a competitive advantage over other livestock areas because of the availability of plentiful feed supplies;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the farm cooperative business structure to determine how it may be used to expand dairy and livestock production to enhance rural economic development; 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 653**SENATE CONCURRENT RESOLUTION NO. 4036**

(Senators Bercier, T. Mathern, Mutzenberger, Thane, Thompson)
(Representative Boucher)

**INDIAN TEMPORARY ASSISTANCE FOR NEEDY
FAMILIES STUDY**

A concurrent resolution directing the Legislative Council to study the operation of the temporary assistance for needy families program in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state.

WHEREAS, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 provides the state of North Dakota with an annual temporary assistance for needy families block grant to assist needy families so that children may be cared for in their own homes or in the homes of relatives; and

WHEREAS, the temporary assistance for needy families block grant allows states some flexibility in the design of the program; and

WHEREAS, the temporary assistance for needy families block grant requires recipients of assistance to meet certain work requirements and limits the number of months an adult may receive such assistance; and

WHEREAS, an increasing percent of the recipients of assistance under the temporary assistance for needy families block grant in North Dakota are members of a federally recognized Indian tribe; and

WHEREAS, a large portion of these individuals resides on Indian reservations within the state; and

WHEREAS, the Indian reservations are located in the rural areas of the state and are economically depressed with an unemployment rate approaching sixty percent according to the Bureau of Indian Affairs; and

WHEREAS, while federal law requires states to disregard the months of assistance received by an adult while living on an Indian reservation with at least fifty percent unemployment, a question has arisen as to the method to be used to determine unemployment rate statistics; and

WHEREAS, the effective coordination and cooperation between the state, tribes, and local governments are critical to the success of welfare, job and workforce training, and economic development programs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the operation of the temporary assistance for needy families program in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state; and

BE IT FURTHER RESOLVED, that the Legislative Council, in conducting its study, evaluate the impact of the temporary assistance for needy families program on the federally recognized Indian tribes within the state; and

BE IT FURTHER RESOLVED, that the Legislative Council, in conducting its study, evaluate the use of the Bureau of Indian Affairs unemployment rate statistics to determine if adults within an Indian reservation are exempt from the state's lifetime limit under the temporary assistance for needy families program and evaluate and consider other methods of determining the unemployment rate specifically as it applies to those areas; and

BE IT FURTHER RESOLVED, that the Legislative Council review the process through which the Department of Human Services receives input from local governments and the federally recognized Indian tribes within the state; and

BE IT FURTHER RESOLVED, that the Legislative Council study how state-sponsored economic development, job training, and workforce training programs can be coordinated between the state and federally recognized Indian tribes within the state; and

BE IT FURTHER RESOLVED, that the Legislative Council consider the impact of tribal sovereignty on economic development and the implementation of the temporary assistance for needy families program in areas under the jurisdiction of federally recognized Indian tribes within the state; and

BE IT FURTHER RESOLVED, that the Legislative Council, in conducting its study, request input from members of the federally recognized Indian tribes within the state and from officials of the government of those tribes, especially tribal officials involved with human services and economic development 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-seventh Legislative Assembly.

Filed April 6, 1999

CHAPTER 654**SENATE CONCURRENT RESOLUTION NO. 4037**

(Senator W. Stenehjem)
(Representatives Kliniske, Poolman)

STUDENT HEALTH SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the maintenance and funding of basic student health services at institutions of higher education under the control of the State Board of Higher Education.

WHEREAS, student health services at institutions of higher education under the control of the State Board of Higher Education are maintained by the assessment of student health services fees; and

WHEREAS, by spreading the cost of providing basic health services over a large number of university students, student health fees conceptually ensure continued service at a reasonable price; and

WHEREAS, the cost of maintaining student health services at institutions of higher education under the control of the State Board of Higher Education continues to escalate; and

WHEREAS, there is fear that the increase in student fees which will be necessary to maintain student health services at institutions under the control of the State Board of Higher Education may be prohibitively high;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the maintenance and funding of basic student health services at institutions of higher education under the control of the State Board of Higher Education; 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-seventh Legislative Assembly.

Filed March 25, 1999

CHAPTER 655**SENATE CONCURRENT RESOLUTION NO. 4038**

(Senators Flakoll, Freborg, Holmberg, Wardner)
(Representatives Hawken, N. Johnson)

**SCHOOL DISTRICT ENDOWMENT FUND USAGE
STUDY**

A concurrent resolution directing the Legislative Council to study options for the use of endowment funds for school districts and the feasibility and desirability of providing state matching funds.

WHEREAS, each school district in this state strives to provide a quality education to its students; and

WHEREAS, each school district in this state struggles to find the funding that will allow the provision of a quality education to its students; and

WHEREAS, endowment funds have long been used at institutions of higher education; and

WHEREAS, endowment funds with a matching component could create a steady source of revenue for a school district; and

WHEREAS, 90 percent of the endowment's interest could be made available to the school district each year, with 50 percent of the funds supplementing teacher salaries and 50 percent supporting teacher enhancement programs and bonuses for teachers; and

WHEREAS, 10 percent of the endowment's interest could be partially used for administrative expenses and the remainder could be retained in the fund; and

WHEREAS, the state could match the first \$5,000 of any amount donated by an individual or a business entity, up to an annual limit of no more than \$25,000 per donor;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study options for the use of endowment funds for school districts and the feasibility and desirability of providing state matching 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 656**SENATE CONCURRENT RESOLUTION NO. 4039**

(Senators Lindaas, W. Stenehjem, Tomac)
(Representatives Aarsvold, Maragos, Wald)

NONRESIDENT STUDENT RECRUITMENT STUDY

A concurrent resolution directing the Legislative Council to study methods by which qualified out-of-state students can be recruited by public institutions of higher education in this state and encouraged to enroll in postsecondary programs.

WHEREAS, the citizens of this state have long valued their access to quality and affordable higher education; and

WHEREAS, the citizens of this state have long valued the unique features and specific strengths of each public institution of higher education; and

WHEREAS, the public institutions of higher education in this state have experienced steady student enrollments during the past decade; and

WHEREAS, the number of students in grades 1 through 12 in this state has decreased by 4,700 during the past five years; and

WHEREAS, the number of students in grades 1 through 12 in this state is expected to decrease by another 2,000 during each of the next 10 years; and

WHEREAS, the decreasing number of students in grades 1 through 12 in this state will have an economic impact on the institutions of higher education unless actions are taken to counteract the declining numbers; and

WHEREAS, while this state is contending with decreasing enrollments at the elementary, secondary, and postsecondary levels, other states are contending with dramatically increasing enrollments at all three levels; and

WHEREAS, each public institution of higher education has a minimum number of students required for its efficient utilization; and

WHEREAS, many out-of-state students remain in this state after they graduate; and

WHEREAS, it would be in the best interest of the public institutions of higher education in this state if they encouraged qualified students from out of state to enroll in programs currently operated at less than maximum or optimal capacity; and

WHEREAS, additional out-of-state students will generate positive economic effects for this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods by which qualified out-of-state students can be recruited by public institutions of higher education in this state and encouraged to enroll in postsecondary 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 657**SENATE CONCURRENT RESOLUTION NO. 4040**

(Senators Wanzek, Christmann, Tomac)
(Representatives Belter, Meyer, Nicholas)

AGRICULTURAL RETIREMENT FUND STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a mechanism to allow farmers and ranchers to shelter a portion of their income in an agricultural real estate asset retirement-type fund.

WHEREAS, a safe and secure source of retirement funds to supplement Social Security benefits is essential to a quality retirement; and

WHEREAS, investment in agricultural real estate is the major retirement investment and the source of retirement security for many farmers and ranchers; and

WHEREAS, a safe and secure retirement for the state's farmers and ranchers is essential to the general welfare and prosperity of this state; and

WHEREAS, many farmers and ranchers do not have sufficient disposable income to fund an individual retirement account, a retirement plan for self-employed individuals, or a similar account or plan established pursuant to federal law; and

WHEREAS, at retirement, the net worth of many farmers and ranchers is tied up in nonliquid assets such as land and machinery and thus is not available to fund a quality retirement;

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 mechanism to allow farmers and ranchers to shelter a portion of their income in an agricultural real estate asset retirement-type fund; 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 658**SENATE CONCURRENT RESOLUTION NO. 4041**

(Senators Wanzek, Tomac)
(Representatives Belter, Meyer, Nicholas)

**AGRICULTURAL BUSINESS INVESTMENT INCENTIVE
STUDY**

A concurrent resolution directing the Legislative Council to study potential tax incentives and regulatory relief that would encourage greater investment participation by North Dakota residents in agricultural business ownership.

WHEREAS, it is the intent of the Legislative Assembly that North Dakota becomes the trusted provider of the highest-quality food in the world with prosperous family farms, thriving rural communities, and world-class stewardship of resources and to significantly increase net farm income, improve the quality of rural life, and increase North Dakota's rural population; and

WHEREAS, the Legislative Assembly seeks to achieve these goals by making North Dakota agricultural products synonymous with high quality to dominate the premium markets, increasing value-added agricultural processing, diversifying and increasing the value of agricultural production, increasing farm and nonfarm cooperation that supports thriving rural communities and enhances our natural resources, and creating a political, regulatory, economic, trade, financial, and natural resource environment in which North Dakota producers can compete in the global marketplace;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study potential tax incentives and regulatory relief that would encourage greater investment participation by North Dakota residents in agricultural business ownership; 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-seventh Legislative Assembly.

Filed March 16, 1999

CHAPTER 659**SENATE CONCURRENT RESOLUTION NO. 4042**

(Senators G. Nelson, Freborg)

ACADEMIC STANDARDS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of developing and implementing statewide academic standards for and assessments of elementary and high school students and a system of accountability at the school and school district level.

WHEREAS, research has shown that a majority of American citizens support setting and enforcing consistent academic standards that prompt students from all socioeconomic backgrounds to achieve at higher levels; and

WHEREAS, states are using a myriad of strategies to develop and implement academic standards; and

WHEREAS, to be effective academic standards must be accompanied by assessments that measure students' progress toward attaining the standards; and

WHEREAS, the Superintendent of Public Instruction has developed various voluntary academic standards, and a legislative study should be conducted before further development of academic standards;

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 and implementing statewide academic standards for and assessments of elementary and high school students and a system of accountability at the school and school district level; 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 660**SENATE CONCURRENT RESOLUTION NO. 4043**

(Senators Watne, St. Aubyn)

VOTER REGISTRATION STUDY

A concurrent resolution directing the Legislative Council to study voter registration.

WHEREAS, North Dakota is the only state that does not require qualified electors to register to vote; and

WHEREAS, proponents of voter registration contend that the likelihood of voter fraud would be reduced if electors were required to register prior to elections; and

WHEREAS, because North Dakota has no voter registration requirements, the state is currently exempt from the National Voter Registration Act of 1993, commonly referred to as the motor voter law; and

WHEREAS, because the benefits and detriments to implementing voter registration are not easily identified, a comprehensive study of voter registration should be undertaken before the Legislative Assembly attempts to implement a program of voter registration;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study voter registration; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 661**SENATE CONCURRENT RESOLUTION NO. 4044**

(Senators St. Aubyn, W. Stenehjem)

**BLIND AND VISUALLY IMPAIRED SERVICES
CONSOLIDATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating under the School for the Blind all programs and services provided to children and adults who are blind or visually impaired.

WHEREAS, the state has a significant interest in ensuring that children and adults who are blind or visually impaired are able 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 as independently as possible; and

WHEREAS, it is the responsibility of the state to make available an appropriate continuum of services to children and adults who are blind or visually impaired; and

WHEREAS, the state offers a variety of services to children and adults who are blind or visually impaired through the School for the Blind and the Vocational Rehabilitation Division of the Department of Human Services;

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 consolidating under the School for the Blind all programs and services provided to children and adults who are blind or visually impaired; 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-seventh Legislative Assembly.

Filed March 25, 1999

CHAPTER 662**SENATE CONCURRENT RESOLUTION NO. 4045**

(Senators St. Aubyn, Grindberg)

**DEVELOPMENTALLY DISABLED SERVICES FUNDING
STUDY**

A concurrent resolution directing the Legislative Council to study alternative systems for the funding of services delivered to children and adults who are developmentally disabled.

WHEREAS, the state has a significant interest in ensuring that children and adults who are developmentally disabled are able to function as independently as possible; and

WHEREAS, children and adults who are developmentally disabled require a continuum of services and assistance if they are to function as independently as possible; and

WHEREAS, it is the responsibility of the state to make available an appropriate continuum of services to children and adults who are developmentally disabled; and

WHEREAS, the system for delivering services to children and adults who are developmentally disabled should be both simple and nonintrusive; and

WHEREAS, requirements resulting from the ARC lawsuit may still exist which may no longer be necessary to provide appropriate services; and

WHEREAS, the state could find opportunities to remove duplication of administrative requirements, especially in the area of audits; and

WHEREAS, the state could develop pilot projects to examine the applicability of other states' methods for funding services delivered to children and adults who are developmentally disabled;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study alternative systems for the funding of services delivered to children and adults who are developmentally disabled; 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-seventh Legislative Assembly.

Filed March 25, 1999

CHAPTER 663**SENATE CONCURRENT RESOLUTION NO. 4046**

(Senator W. Stenehjem)
(Representative DeKrey)

CHARITABLE GAMING LAWS STUDY

A concurrent resolution directing the Legislative Council to study the appropriateness and adequacy of the laws on charitable gaming, including the financial remuneration allowed to owners of charitable gaming sites.

WHEREAS, the charitable gaming industry has experienced a decline of activity and there has been increased competition; and

WHEREAS, there are a variety of gaming site rent structures and limitations for the various games of chance; and

WHEREAS, the site rent limits for games of chance have not been reviewed recently and have not been increased since 1991; and

WHEREAS, owners of gaming sites have testified that in light of increases in taxes, wages, and utilities over the past several years, gaming site rent limits should be reviewed;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the appropriateness and adequacy of the laws on charitable gaming, including the financial remuneration allowed to owners of charitable gaming sites; 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-seventh Legislative Assembly.

Filed March 16, 1999

CHAPTER 664**SENATE CONCURRENT RESOLUTION NO. 4047**

(Senators DeMers, Holmberg, C. Nelson, Nething, Traynor)
(Representative Svedjan)

STATE PUBLICATIONS ELECTRONIC ACCESS STUDY

A concurrent resolution directing the Legislative Council to study methods to preserve and provide access to state publications in an electronic format.

WHEREAS, state agencies are moving toward producing publications solely in an electronic format; and

WHEREAS, an electronic catalog of state documents does not exist in the statewide library system; and

WHEREAS, the state does not have a coordinated approach or plan for preserving or providing access to electronic publications; and

WHEREAS, without a state preservation and access policy, researchers, historians, and agencies irretrievably lose sources necessary for the interpretation of the state's history and citizens find fewer permanent guides to past and present activities of their government; and

WHEREAS, agencies directly interested in developing a preservation and access policy include the State Library, the State Archivist, the Information Services Division, the Secretary of State, the University System, the NDSU Extension Service, Job Service North Dakota, the Department of Health, the Water Commission, the Game and Fish Department, the State Auditor, the Public Service Commission, the Office of Management and Budget, and the Supreme Court; and

WHEREAS, as state agencies develop information technology plans, the opportunity to integrate a policy of preservation and extended access to the publications appears feasible;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods to preserve and provide access to state publications in an electronic format; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 665**SENATE CONCURRENT RESOLUTION NO. 4048**

(Senators W. Stenehjem, Traynor, Watne)
(Representatives DeKrey, Hawken, Mahoney)

**SEXUAL OFFENDER LAW, SENTENCING, AND
TREATMENT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses, sentencing of sexual offenders, and sexual offender commitment treatment.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they address the problems they are intended to rectify; and

WHEREAS, in 1997 and 1999 the Legislative Assembly considered at least 15 measures relating to sexual offenders; and

WHEREAS, the sexual offense statutes are interrelated and sometimes a change in one section necessitates a reevaluation of other sections;

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 revising the sections of the North Dakota Century Code which relate to sexual offenses, the sentencing of sexual offenders, and sexual offender commitment treatment; 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-seventh Legislative Assembly.

Filed March 19, 1999

CHAPTER 666**SENATE CONCURRENT RESOLUTION NO. 4049**

(Senator Grindberg)

DISASTER RELIEF FUND STUDY

A concurrent resolution directing the Legislative Council to study establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster areas.

WHEREAS, political subdivisions and property owners in areas that have suffered a major disaster are faced with a property tax dilemma in the aftermath of the disaster because political subdivisions have an increased need for revenues at the same time property owners require abatement of property taxes which diminishes the property tax base; and

WHEREAS, analysis should be done of the feasibility and desirability of establishing a fund that could be used to replace property tax revenue losses following a disaster and to avoid shifting of property tax burdens to properties not affected by the disaster when abatements are granted for damaged properties; and

WHEREAS, complex issues must be addressed to establish an actuarially sound fund to deal with property tax needs following disasters and to determine an appropriate funding source and provide for appropriate operation 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 establishment and operation of a disaster relief fund to address property tax needs in federally declared disaster 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 667**SENATE CONCURRENT RESOLUTION NO. 4050**

(Senators Krebsbach, DeMers, Kilzer, Mutzenberger, W. Stenehjem, Thane)
(Government and Veterans Affairs Committee)

**GRANT PREAPPROVAL PROCESS IMPLEMENTATION
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a grant preapproval process for every state agency, except institutions under the state board of higher education.

WHEREAS, state agencies apply for and receive various grants; and

WHEREAS, many grants have restrictions on how grant funds or property may be used; and

WHEREAS, after grant funds are exhausted, state funding may be required to continue the projects; and

WHEREAS, the failure of Senate Bill No. 2431, which would have required preapproval of every state agency grant application, to pass requires the review of the process of applying for grants to ensure that restrictions on grant funds do not violate state law or policy and the grants do not obligate the state to provide future funding;

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 a grant preapproval process for every state agency, except institutions under the state board of higher education; 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-seventh Legislative Assembly.

Filed March 18, 1999

CHAPTER 668**SENATE CONCURRENT RESOLUTION NO. 4051**

(Senator W. Stenehjem)
(Representative DeKrey)

CRIMINAL OFFENSE CLASSIFICATION STUDY

A concurrent resolution directing the Legislative Council to study the classification of criminal offenses throughout the North Dakota Century Code.

WHEREAS, the last major review of criminal offenses was done during the 1973-74 interim, which resulted in a bill that amended 597 existing sections and repealed 245 existing sections of the code; and

WHEREAS, there are over 247 offenses classified as felonies, over 708 offenses classified as misdemeanors, and over 147 offenses classified as infractions; and

WHEREAS, the proper classification of offenses provides for equitable punishment based upon the elements of the offense committed; and

WHEREAS, the appropriate classification of offenses may result in more efficient use of state resources in determining levels of punishment, rehabilitation, and the appropriate alternatives to incarceration;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the classification of criminal offenses throughout 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-seventh Legislative Assembly.

Filed March 26, 1999

CHAPTER 669**SENATE CONCURRENT RESOLUTION NO. 4053**

(Senators T. Mathern, G. Nelson)
(Representatives Boucher, Dorso)
(Approved by the Delayed Bills Committee)

**INTERNET TAX FREEDOM ACT OBLIGATION
FULFILLMENT URGED**

A concurrent resolution urging Congress to act quickly to fulfill its obligation under the Internet Tax Freedom Act with regard to balanced membership of the Advisory Commission on Electronic Commerce and urging the Advisory Commission on Electronic Commerce to be mindful in its deliberations of the impact of Internet usage and Internet sales transactions on telecommunications, traditional retail businesses, and state and local tax bases.

WHEREAS, the Internet Tax Freedom Act was signed into law on October 21, 1998, and provided for establishment of the Advisory Commission on Electronic Commerce, to include 16 members appointed by Congressional leadership, eight of whom are to represent state and local governments and eight of whom are to represent industry and consumer groups; and

WHEREAS, equal representation for state and local governments is critical to North Dakota and other states because sales taxes have traditionally been a state prerogative and the participation of state and local governments is essential to the validity of recommendations of the Advisory Commission because the enormous growth in Internet usage and Internet sales transactions seriously impacts telecommunications, traditional retail businesses, and state and local tax bases; and

WHEREAS, appointments to the Advisory Commission on Electronic Commerce were made by Congressional leaders without consultations among themselves and resulted in an imbalance in the membership of the Advisory Commission on Electronic Commerce, with fewer than eight members representing state and local governments, which does not comply with the Internet Tax Freedom Act; and

WHEREAS, the failure of Congress to comply with its own legislation and appoint a balanced commission must be corrected as soon as possible because the Advisory Commission on Electronic Commerce has a limited time to complete its work and much of that time has already been lost;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to act quickly to fulfill its obligation under the Internet Tax Freedom Act with regard to balanced membership of the Advisory Commission on Electronic Commerce and urges the Advisory Commission on Electronic Commerce to be mindful in its deliberations of the impact of Internet usage and Internet sales transactions on telecommunications, traditional retail businesses, and state and local tax bases; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Majority and Minority Leaders of the United States Senate, the Speaker of the United States House of Representatives, the Minority Leader of the United States House of Representatives, to each member of the Advisory Commission on Electronic Commerce, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 1999

CHAPTER 670**SENATE CONCURRENT RESOLUTION NO. 4054**

(Senators Wardner, Bowman)

(Representatives Drovdal, N. Johnson, Kempenich, Wald)

(Approved by the Delayed Bills Committee)

**THEODORE ROOSEVELT CONGRESSIONAL MEDAL
OF HONOR URGED**

A concurrent resolution urging the President to award Theodore Roosevelt the congressional Medal of Honor.

WHEREAS, Theodore Roosevelt, 26th President of the United States, was a Colonel of the First United States Volunteer Cavalry at the Battle of San Juan Heights in Cuba on July 1, 1898, during the Spanish-American War; and

WHEREAS, Theodore Roosevelt and the Roughriders led the charge up Kettle Hill with great courage and bravery; and Theodore Roosevelt distinguished himself through his leadership skills; and

WHEREAS, Theodore Roosevelt's commanding general recommended that Theodore Roosevelt receive the Medal of Honor; and

WHEREAS, on November 12, 1998, Congress passed Public Law 105-371; 112 Stat. 3376, which requested and authorized the President to issue the Medal of Honor to Theodore Roosevelt;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the President of the United States to award Theodore Roosevelt the congressional Medal of Honor; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States.

Filed April 6, 1999

CHAPTER 671**SENATE CONCURRENT RESOLUTION NO. 4055**

(Senator Christmann)

(Approved by the Delayed Bills Committee)

**CRIMINAL BACKGROUND CHECK EXEMPTION
URGED**

A concurrent resolution urging Congress to provide for this state's concealed weapons permit to create an exemption from the national instant criminal background check system.

WHEREAS, 18 United States Code Section 922(t)(3) provides for an exemption from the national instant criminal background check system for the purchase of firearms by individuals with a concealed weapons permit; and

WHEREAS, this state has a concealed weapons permit that has been interpreted to not provide an exemption; and

WHEREAS, this state permanently prohibits a person confined or committed to a hospital or other institution and a mentally deficient person from receiving a permit, prohibits a person under 18 years of age from receiving a permit, prohibits a person who has committed a felony involving violence or intimidation from receiving a permit for 10 years, and prohibits any person who has committed a felony not involving violence or intimidation or a class A misdemeanor involving violence or intimidation from receiving a permit for five years;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly urges the Congress of the United States to provide for this state's concealed weapons permit to create an exemption from the national instant criminal background check system; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the director of the Federal Bureau of Alcohol, Tobacco and Firearms and to each member of the North Dakota Congressional Delegation.

Filed April 6, 1999

CHAPTER 672**SENATE CONCURRENT RESOLUTION NO. 4056**

(Senators Holmberg, DeMers, Mutch, St. Aubyn, W. Stenehjem)
(Representatives Brusegaard, Delmore, Glasheim, Jensen, Kliniske,
Lloyd, Nottestad, Poolman, Svedjan, Winrich)
(Approved by the Delayed Bills Committee)

**RALPH AND BETTY ENGELSTAD GIFT
APPRECIATION**

A concurrent resolution of appreciation to Ralph and Betty Engelstad for their gift of \$100 million to the University of North Dakota.

WHEREAS, Ralph Engelstad is a graduate of the University of North Dakota and was a goalie on the UND hockey team in the 1950s; and

WHEREAS, Ralph Engelstad turned down an offer to play professional hockey in order to launch a successful business career and has become one of our nation's outstanding entrepreneurs; and

WHEREAS, Ralph and Betty Engelstad have never forgotten their midwestern roots and have given generously to his alma mater, including the valuable General Patton papers which are now a permanent part of the UND special collections; and

WHEREAS, Ralph and Betty Engelstad have now made a gift commitment of \$100 million to the University of North Dakota Foundation, half of which is to be used to build a state-of-the-art 12,000-seat hockey arena and the rest to be available to benefit the University; and

WHEREAS, this latest gift from Ralph and Betty Engelstad is among the largest private gifts ever donated to a public university or college in this nation; and

WHEREAS, the business success of the Engelstads and their generosity to the University of North Dakota have set examples for young people to emulate;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That on behalf of all the people of North Dakota, the Legislative Assembly expresses sincerest appreciation for the generosity and foresight of Ralph and Betty Engelstad in making this historic contribution to benefit the University of North Dakota, its present and future students, and the people of this state and region; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Ralph and Betty Engelstad.

Filed March 31, 1999

CHAPTER 673**SENATE CONCURRENT RESOLUTION NO. 4057**

(Senators Lyson, W. Stenehjem)
(Representatives Drovdal, L. Thoreson)
(Approved by the Delayed Bills Committee)

LEIF ERICSON YEAR DECLARATION URGED

A concurrent resolution urging the Governor to declare October 9, 1999, through October 8, 2000, "Leif Ericson Year".

WHEREAS, North America will be observing the 1000-year anniversary of Leif Ericson's voyage to North America; and

WHEREAS, the Sons of Norway International is planning major events throughout the United States and Canada to celebrate "Leif Ericson Year", October 9, 1999, through October 8, 2000; and

WHEREAS, because of the strong Scandinavian presence in North Dakota, it is appropriate for the state to pay special recognition to Leif Ericson's daring voyage; and

WHEREAS, it is appropriate to foster an awareness of Nordic traditions, philosophies, and contributions to the State of North Dakota and North America as we best understand the Viking culture to be an important contributor to the fountain of democratic life; and

WHEREAS, a national Leif Ericson Millennium Committee has been organized under the auspices of the Leif Ericson Society International which is mobilizing for a yearlong continental tribute;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Governor declare October 9, 1999, through October 8, 2000, "Leif Ericson Year" so that the state may best observe the Nordic traditions and these tradition's contributions to our culture; and

BE IT FURTHER RESOLVED, that the Fifty-sixth Legislative Assembly urges the Governor to appoint a statewide committee to organize appropriate events of recognition which will do honor to the memory and the spirit of that outstanding Viking, Leif Ericson; and

BE IT FURTHER RESOLVED, that the Secretary of State forward an enrolled copy of this resolution to Governor Edward T. Schafer and to the President of Sons of Norway International.

Filed April 6, 1999

CHAPTER 674**SENATE CONCURRENT RESOLUTION NO. 4058**

(Senators W. Stenehjem, DeMers, Holmberg, St. Aubyn)
(Representatives Delmore, Glassheim, Jensen, Kliniske, Nottestad,
Poolman, Svedjan, Winrich)
(Approved by the Delayed Bills Committee)

SIoux WOMEN'S BASKETBALL CONGRATULATIONS

A concurrent resolution congratulating the University of North Dakota Fighting Sioux women's basketball team for winning its third consecutive NCAA Division II national championship.

WHEREAS, the University of North Dakota Fighting Sioux women's basketball team captured its third consecutive NCAA Division II championship and capped its postseason play with an 80-63 championship victory over Arkansas Tech at Pine Bluff, Arkansas; and

WHEREAS, the Fighting Sioux women's basketball team ran off 31 victories against only one loss and for the 10th consecutive season won more than 20 games under the leadership of Coach Gene Roebuck; and

WHEREAS, Jenny Crouse, named most outstanding player of the Division II Elite Eight tournament for the second consecutive year, Jaime Pudenz and Katie Richards, named to the all-tournament team, and the other talented individual athletes distinguished themselves under the guidance of Coach Roebuck by displaying explosive offense, tenacious defense, and exemplary teamwork in realizing their goal of a third consecutive national championship, 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-sixth Legislative Assembly takes pride in extending to all members and coaches of the University of North Dakota Fighting Sioux women's basketball team its heartiest congratulations for winning the 1999 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 University of North Dakota Fighting Sioux women's basketball team, to each of their coaches, and to the president of the University of North Dakota, home of the Fighting Sioux.

Filed March 31, 1999

CHAPTER 675**SENATE CONCURRENT RESOLUTION NO. 4059**

(Senator Lyson)

(Approved by the Delayed Bills Committee)

**ARMED FORCES ENGAGED IN YUGOSLAVIA
SUPPORT**

A concurrent resolution supporting the members of the United States Armed Forces who are engaged in military operations against the Federal Republic of Yugoslavia and recognizing their professionalism, dedication, patriotism, and courage.

WHEREAS, the President has authorized United States' participation in NATO military operations against the Federal Republic of Yugoslavia; and

WHEREAS, up to 22,000 members, including members from North Dakota, of the Armed Forces are involved in operations in and around the Balkans region with the active participation of NATO and other coalition forces; and

WHEREAS, the Legislative Assembly of North Dakota and the people of North Dakota have the greatest pride in members of the Armed Forces and strongly support them;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-sixth Legislative Assembly supports the members of the United States Armed Forces who are engaged in military operations against the Federal Republic of Yugoslavia and recognizes their professionalism, dedication, patriotism, and courage; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the United States Secretary of Defense.

Filed April 8, 1999

HOUSE MEMORIAL RESOLUTION

CHAPTER 676

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:

Arlo Beggs, who served in the 24th and 25th Legislative Assemblies, from District 46, died December 30, 1998;

James A. Berg, who served in the 53rd Legislative Assembly, from District 44, died September 20, 1997;

Lloyd Bjella, who served in the 34th Legislative Assembly, from District 45, died October 24, 1998;

Arne S. Boyum, who served in the 40th through the 42nd Legislative Assemblies, from District 13, died March 23, 1998;

Ralph Dewing, who served in the 31st Legislative Assembly, from District 40, died January 27, 1999;

Orin L. Dunlop, who served in the 33rd and 34th Legislative Assemblies, from District 19, died September 16, 1998;

Leonard Fagerholt, who served in the 44th Legislative Assembly, from District 16, died April 12, 1998;

Theodore Hardmeyer, who served in the 39th Legislative Assembly, from District 49, died May 5, 1998;

Brynhild Haugland, who served in the 26th through the 39th Legislative Assemblies, from District 29, in the 40th through the 44th Legislative Assemblies, from District 5, and in the 45th through the 51st Legislative Assemblies, from District 40-50, died August 9, 1998;

Ralph Hickle, who served in the 39th Legislative Assembly, from District 48, and in the 40th through the 46th Legislative Assemblies, from District 33, died February 24, 1998;

Clayton A. Lodoen, who served in the 43rd Legislative Assembly, from District 21, died May 8, 1998;

Dean Miller, who served in the 37th Legislative Assembly, from District 3, died July 15, 1997;

Norbert Muggli, who served in the 35th and 36th Legislative Assemblies, from District 31, died April 7, 1997;

Jack Murphy, who served in the 42nd through the 51st Legislative Assemblies, from District 36, died March 11, 1997;

John NeuKircher, who served in the 33rd and in the 35th through the 38th Legislative Assemblies, from District 23, died March 25, 1998;

Bill Oban, who served in the 49th through the 55th Legislative Assemblies, from District 32, died July 10, 1998;

Leslie C. Powers, who served in the 39th Legislative Assembly, from District 15, and in the 40th and 41st Legislative Assemblies, from District 24, died November 24, 1998;

F. Bruce Walker, who served in the 54th Legislative Assembly, from District 5, died December 3, 1998;

Joe Welder, who served in the 38th and 39th Legislative Assemblies, from District 36, in the 40th through the 42nd Legislative Assemblies, from District 30, and in the 43rd Legislative Assembly, from District 28, died April 4, 1997; 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 12, 1999

CHAPTER 677**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:

James A. Berg, who served in the 55th Legislative Assembly, from District 44, died September 20, 1997;

Ralph Dewing, who served in the 32nd through the 35th Legislative Assemblies, from District 40, died January 27, 1999;

Lloyd M. Erickson, who served in the 35th through the 38th Legislative Assemblies, from District 49, died July 28, 1998;

John O. Garaas, who served in the 35th through the 37th Legislative Assemblies, from District 41, died March 4, 1997;

Emil E. Kautzmann, who served in the 38th and 39th Legislative Assemblies, from District 30, and in the 40th through the 44th Legislative Assemblies, from District 34, died September 15, 1996;

Clayton A. Lodoen, who served in the 45th through the 51st Legislative Assemblies, from District 13, died May 8, 1998;

Frank A. Wenstrom, who served in the 35th and 36th Legislative Assemblies, from District 45, and in the 40th through the 49th Legislative Assemblies, from District 1, died May 12, 1997; 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 12, 1999