

August 2008

Introduced by

1 A BILL for an Act to create and enact chapter 47-32 of the North Dakota Century Code, relating
2 to technical corrections; to amend and reenact sections 1-02-12 and 16.1-01-09, subsection 2
3 of section 57-39.2-18, and section 57-40.2-09 of the North Dakota Century Code, relating to
4 technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and
5 to repeal section 15.1-13-32 and chapter 33-06 of the North Dakota Century Code, relating to
6 obsolete provisions.

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

8 **SECTION 1. AMENDMENT.** Section 1-02-12 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **1-02-12. Headnote, cross-reference note, and source note.** No headnote, source
11 note, or cross-reference note, whether designating an entire title, chapter, section, subsection,
12 or subdivision, constitutes any part of a statute. A headnote may not be used to determine
13 legislative intent or the legislative history for any statute. An effective date or expiration date
14 note preceding a headnote is not a part of the headnote and is a part of the statute.

NOTE: This section provides that the headnote for a section of the North Dakota
Century Code is not part of the law. However, since this section was enacted a change
in publication style has been made and effective date and expiration date notes are now
included immediately preceding the headnote. Effective date and expiration date notes
may be amended and are considered part of the statute so language is added to make
clear that an effective date or expiration date note is a part of the law.

15 **SECTION 2. AMENDMENT.** Section 16.1-01-09 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **16.1-01-09. Initiative or referendum petitions - Signature - Form - Circulation.**

18 1. a. A request of the secretary of state for approval of a petition to initiate or refer
19 a measure may be presented over the signatures of the sponsoring
20 committee on individual signature forms that have been notarized. The

1 secretary of state shall prepare a signature form that includes provisions for
2 identification of the measure; the printed name, signature, and address of the
3 committee member; and notarization of the signature. The filed signature
4 forms must be originals.

5 b. Upon receipt of a petition to initiate or refer a measure, the secretary of state
6 shall draft a short and concise statement that fairly represents the measure.
7 The statement must be submitted to the attorney general for approval or
8 disapproval. An approved statement must be affixed to the petition before it is
9 circulated for signatures, must be called the "ballot title", and must be placed
10 immediately before the full text of the measure.

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

14 2. No person may sign any initiative or referendum petition circulated pursuant to
15 article III of the Constitution of North Dakota unless the person is a qualified
16 elector. No person may sign any petition more than once, and each signer shall
17 add the signer's complete residential address or rural route or general delivery
18 address and the date of signing. Every qualified elector signing a petition shall do
19 so in the presence of the person circulating the petition. A referendum or initiative
20 petition must be on a form prescribed by the secretary of state containing the
21 following information:

22 REFERENCE [INITIATIVE] PETITION

23 TO THE SECRETARY OF STATE,

24 STATE OF NORTH DAKOTA

25 We, the undersigned, being qualified electors request [House (Senate) Bill
26 _____ passed by the _____ Legislative Assembly] [the following
27 initiated law] be placed on the ballot as provided by law.

28 SPONSORING COMMITTEE

29 The following are the names and addresses of the qualified electors of the
30 state of North Dakota who, as the sponsoring committee for the petitioners,
31 represent and act for the petitioners in accordance with law:

1	Name	Address
2	_____ (Chairman)	_____
3	_____	_____

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. ~~IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.~~ IF MATERIAL IS NOT UNDERSCORED OR OVERSTRUCK, THE MATERIAL IS EXISTING LAW THAT IS NOT BEING CHANGED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Residential Address or Complete Rural Route or General Delivery Address	City, State
28	1.	_____	_____	_____
29	2.	_____	_____	_____
30	3.	_____	_____	_____
31	4.	_____	_____	_____

- 1 5. _____
2 6. _____
3 7. _____
4 8. _____

5 The number of signature lines on each page of a printed petition may vary if
6 necessary to accommodate other required textual matter. In this section for
7 referral petitions "full text of the measure" means the bill as passed by the
8 legislative assembly excluding the session and sponsor identification. In this
9 section for initiative petitions "full text of the measure" means an enacting
10 clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE
11 OF NORTH DAKOTA" and the body of the bill. If the measure amends the
12 law, all new statutory material must be underscored and all statutory material
13 to be deleted must be overstruck by dashes. When repealing portions of the
14 law, the measure must contain a repealer clause and, in brackets, the text of
15 the law being repealed.

16 3. Each copy of any petition provided for in this section, before being filed, must have
17 attached an affidavit executed by the circulator in substantially the following form:

18 State of North Dakota)
19) ss.
20 County of _____)
21 (county where signed)
22 I, _____, being sworn, say that I am a qualified elector; that I
23 (circulator)
24 reside at _____;
25 (address)
26 that each signature contained on the attached petition was executed in my
27 presence; and that to the best of my knowledge and belief each person whose
28 signature appears on the attached petition is a qualified elector; and that each
29 signature contained on the attached petition is the genuine signature of the
30 person whose name it purports to be.
31 _____

- 1 (signature of circulator)
- 2 Subscribed and sworn to before me on _____, _____, at
- 3 _____, North Dakota.
- 4 (city)
- 5 (Notary Seal) _____
- 6 (signature of notary)
- 7 Notary Public
- 8 My commission expires _____
- 9 4. No petition shall be circulated under the authority of article III of the Constitution of
- 10 North Dakota by a person who is less than eighteen years of age, nor shall the
- 11 affidavit called for by subsection 3 be executed by a person who is less than
- 12 eighteen years of age at the time of signing. All petitions circulated under the
- 13 authority of the constitution and of this section must be circulated in their entirety.
- 14 A petition may not include a statement of intent or similar explanatory information.
- 15 5. When signed petitions are delivered to the secretary of state, the chairperson of
- 16 the sponsoring committee shall submit to the secretary of state an affidavit stating
- 17 that to the best of that person's knowledge, the petitions contain at least the
- 18 required number of signatures.
- 19 6. An initiative or referendum petition may be submitted to the secretary of state until
- 20 midnight of the day designated as the deadline for submitting the petition.
- 21 7. An initiative petition may be circulated for one year from the date it is approved for
- 22 circulation by the secretary of state.

NOTE: This section relates to initiated or referendum petitions and is being amended to be consistent with a change in drafting style for legislative bills. Under the drafting style change, a section containing all new law is required to be underscored and the only statutory language appearing in a legislative bill that is not underscored or overstruck is existing law that is not being changed.

23 **SECTION 3.** Chapter 47-32 of the North Dakota Century Code is created and enacted

24 as follows:

25 **47-32-01. When eviction maintainable.** An action of eviction to recover the

26 possession of real estate is maintainable in the proper district court when:

- 27 1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual
- 28 possession of real property of another and detains the same.

- 1 2. A party, after peaceably entering upon real property, turns out by force, threats, or
2 menacing conduct the party in possession.
- 3 3. A party, by force or by menaces and threats of violence, unlawfully holds and
4 keeps the possession of any real property, whether the possession was acquired
5 peaceably or otherwise.
- 6 4. A lessee, in person or by subtenant, holds over after the termination of the lease or
7 expiration of the lessee's term, or fails to pay rent for three days after the rent is
8 due.
- 9 5. A party continues in possession after a sale of the real property under mortgage,
10 execution, order, or any judicial process and after the expiration of the time fixed by
11 law for redemption, or after the execution and delivery of a deed, or after the
12 cancellation and termination of any contract for deed, bond for deed, or other
13 instrument for the future conveyance of real estate or equity in the real estate.
- 14 6. A party continues wrongfully in possession after a judgment in partition or after a
15 sale under an order or decree of a district court.
- 16 7. A lessee or a person on the premises with the lessee's consent acts in a manner
17 that unreasonably disturbs other tenants' peaceful enjoyment of the premises.
- 18 8. The lessee violates a material term of the written lease agreement between the
19 lessor and lessee.

20 **47-32-02. Appearance - Notice of intention to evict - When required - When and**
21 **how served.** In any action for eviction the time specified in the summons for the appearance of
22 the defendant may not be fewer than three nor more than fifteen days from the date on which
23 the summons is issued. If the person cannot be found in the county, of which the return of the
24 sheriff or process server is prima facie proof, and service has been attempted at least once
25 between the hours of six p.m. and ten p.m. upon the filing of an affidavit of the plaintiff or the
26 plaintiff's attorney stating that the defendant cannot be found or on belief that the defendant is
27 not in this state and a copy of the summons has been mailed to the defendant at the
28 defendant's last-known address if any is known to the plaintiff, service of the summons may be
29 made upon the defendant by the sheriff or process server posting the summons upon the door
30 of the residential unit. In all cases arising under subsections 4, 5, 6, and 8 of section 47-32-01,
31 three days' written notice of intention to evict must be given to the lessee, subtenant, or party in

1 possession, before proceedings can be instituted. The notice may be served and returned as a
2 summons is served and returned or, if the party cannot be found, then by the sheriff of the
3 county or a process server posting the notice conspicuously upon the premises. Service by
4 delivery of a copy of the summons to the defendant in person within the county must be made
5 at least three days before the time fixed for the appearance of the defendant. Service
6 elsewhere or personal service in any other mode must be made at least seven days before the
7 time fixed for the appearance of the defendant.

8 **47-32-03. Legal representatives may bring eviction actions.** Executors and
9 administrators may bring actions of eviction in the district courts in the same manner as their
10 testators and intestates, as the case may be.

11 **47-32-04. Eviction actions not joinable with other actions - Exception - When**
12 **counterclaims only interposable.** An action of eviction cannot be brought in a district court in
13 connection with any other action, except for rents and profits accrued or for damages arising by
14 reason of the defendant's possession. No counterclaim can be interposed in such action,
15 except as a setoff to a demand made for damages or for rents and profits. If the court finds for
16 the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate
17 restitution of the premises. Upon a showing by the defendant that immediate restitution of the
18 premises would work a substantial hardship on the defendant or the defendant's family, except
19 in cases in which the eviction judgment is based in whole or in part on a disturbance of the
20 peace, the court may stay the special execution for a reasonable period, not to exceed five
21 days.

NOTE: Title 33 of the North Dakota Century Code relates to county justice court, which has not existed for many years. The only remaining chapter in Title 33 relates to eviction, contained in Chapter 33-06. It is appropriate to move the eviction laws to Title 47, relating to property. The provisions of Chapter 33-06 are reenacted as Chapter 47-32. Chapter 33-06 is repealed by Section 6 of this bill draft.

22 **SECTION 4. AMENDMENT.** Subsection 2 of section 57-39.2-18 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 2. Any person who ~~shall sell~~ sells tangible personal property, tickets or admissions to
25 places of amusement, and athletic events, or steam, gas, and communication
26 service at retail in this state after that person's permit shall have been revoked, or
27 without procuring a permit ~~within sixty days after the effective date of this chapter,~~
28 as provided in section 57-39.2-14, or who ~~shall violate the provisions of~~ violates

1 section 57-39.2-09, and the officers of any corporation or the managers of any
2 limited liability company who ~~shall so act~~ acts, ~~shall be~~ is guilty of a class A
3 misdemeanor.

NOTE: When this section was enacted effective April 1, 1967, this provision gave retailers 60 days from the effective date of the law to obtain the necessary sales tax permit. It is no longer necessary to allow the 60-day grace period for obtaining a permit, but it is necessary to retain the requirement that the person must obtain a permit before engaging in retail sales.

4 **SECTION 5. AMENDMENT.** Section 57-40.2-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **57-40.2-09. Records required.** Each retailer required or authorized to collect the tax
7 imposed by this chapter, and each person using in this state tangible personal property
8 purchased for resale or for use shall keep such records, receipts, invoices, and other pertinent
9 papers as the commissioner shall require and each such retailer or person shall preserve for a
10 period of three years and three months all invoices and other records of such tangible personal
11 property purchased for resale or for use. The commissioner, or any duly authorized agent, may
12 examine the books, papers, records, and equipment of any person who sells tangible personal
13 property or who is liable for such tax, and may investigate the character of the business of any
14 such person to verify the accuracy of any return made, or if no return was made, to ascertain
15 and determine the amount due. Any such books, papers, and records must be made available
16 within this state for such examination upon reasonable notice if the commissioner shall make an
17 order to that effect.

NOTE: This section as enacted contained the phrase "person using in this state tangible personal property purchased on or after July 1, 1967." The reference to July 1, 1967, was removed and left the sentence grammatically deficient. This amendment inserts the phrase "for resale or for use" after the word "purchased" to match the phrase at the end of the sentence.

18 **SECTION 6. REPEAL.** Section 15.1-13-32 and chapter 33-06 of the North Dakota
19 Century Code are repealed.

NOTE: Section 15.1-13-32 was enacted in 2005 to require the Educational Standards and Practices Board and Department of Public Instruction to discuss with officials from bordering states a unified system of licensing and credentials or reciprocity between the states relating to teachers. The section required the Educational Standards and Practices Board to report its progress, findings, and pending action to the 2007 Legislative Assembly. This section is no longer of any effect.

Chapter 33-06, relating to eviction, is repealed and moved to a new location in Title 47, relating to property. See the note following Section 3 of this bill draft.