

SENATE BILL NO. 2265

Introduced by

Senator Andrist

Representative Froseth

1 A BILL for an Act to create and enact a new section to chapter 44-04 of the North Dakota
2 Century Code, relating to records of victims of domestic violence; and to amend and reenact
3 subsection 4 of section 28-32-08, subsection 2 of section 28-32-10, subsection 5 of section
4 28-32-19, section 28-32-33, subsections 2, 6, and 8 of section 44-04-18, subsections 1 and 6 of
5 section 44-04-18.7, subsection 4 of section 44-04-18.10, section 44-04-18.13, subsection 2 of
6 section 44-04-28, and section 57-40.6-07 of the North Dakota Century Code, relating to fees
7 and discovery in adjudicative proceedings, fees for copies, providing copies of records,
8 personal records in criminal files, release of confidential records, lists of minors, release of
9 social security numbers, and release of 911 records.

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

11 **SECTION 1. AMENDMENT.** Subsection 4 of section 28-32-08 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 4. The agency shall mail or deliver a copy of the regulatory analysis to any person
14 who requests a copy of the regulatory analysis. The agency may charge ~~for the~~
15 ~~actual cost of providing copies~~ a fee for a copy of the regulatory analysis as
16 allowed under section 44-04-18.

17 **SECTION 2. AMENDMENT.** Subsection 2 of section 28-32-10 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 2. The agency shall mail or deliver a copy of the agency's full notice to each member
20 of the legislative assembly whose name appeared as a sponsor or cosponsor of
21 legislation enacted during the most recent session of the legislative assembly
22 which is being implemented by the proposed rule and to each person who has
23 made a timely request to the agency for a copy of the notice. The agency may
24 mail or otherwise provide a copy of the agency's full notice to any person who is

1 likely to be an interested person. The agency shall mail or deliver a copy of the
2 rules to each member of the legislative assembly whose name appeared as a
3 sponsor or cosponsor of legislation enacted during the most recent session of the
4 legislative assembly which is being implemented by the proposed rule and to any
5 person requesting a copy. The agency may charge persons who are not members
6 of the legislative assembly fees for the actual cost of providing copies of the
7 proposed rule as allowed under section 44-04-18.

8 **SECTION 3. AMENDMENT.** Subsection 5 of section 28-32-19 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 5. The code must be arranged, indexed, and printed or duplicated in a manner to
11 permit separate publication of portions thereof relating to individual agencies. An
12 agency may print as many copies of such separate portions of the code as it may
13 require. If the office of the legislative council does not publish the code supplement
14 due to technological problems or lack of funds, the agency whose rules would have
15 been published in the code supplement shall provide a copy of the rules to any
16 person upon request. The agency may charge ~~for the actual cost of providing~~
17 ~~copies~~ a fee for a copy of the rules as allowed under section 44-04-18.

18 **SECTION 4. AMENDMENT.** Section 28-32-33 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.**

21 1. In an adjudicative proceeding, discovery may be obtained in accordance with the
22 North Dakota Rules of Civil Procedure.
23 2. ~~In an adjudicative proceeding, a party must first show good cause, by written~~
24 ~~petition, and get the written approval of the hearing officer before obtaining~~
25 ~~discovery from an administrative agency.~~
26 3. In any adjudicative proceeding, upon the request or motion of any party to the
27 proceeding or upon the hearing officer's own motion on behalf of the agency, a
28 hearing officer may issue subpoenas, discovery orders, and protective orders in
29 accordance with the North Dakota Rules of Civil Procedure. A motion to quash or
30 modify, or any other motion relating to subpoenas, discovery, or protective orders
31 must be made to the hearing officer. The hearing officer's rulings on these motions

1 may be appealed under section 28-32-42 after issuance of the final order by the
2 agency. The cost of issuing and serving a subpoena in any adjudicative
3 proceeding must be paid by the person or agency requesting it.

4 4. 3. Any witness who is subpoenaed under the provisions of this section and who
5 appears at a hearing or other part of an adjudicative proceeding, or whose
6 deposition is taken, shall receive the same fees and mileage as a witness in a civil
7 case in the district court. Witness fees and mileage shall be paid by the party or
8 agency at whose instance the witness appears. Any hearing officer may order the
9 payment of witness fees or mileage by the appropriate party or agency.

10 5. 4. Subpoenas, discovery orders, protective orders, and other orders issued under this
11 section may be enforced by applying to any judge of the district court for an order
12 requiring the attendance of a witness, the production of all documents and objects
13 described in the subpoena, or otherwise enforcing an order. Failure of a witness or
14 other person to comply with the order of the district court is contempt of court which
15 is punishable by the district court, upon application. The judge may award
16 attorney's fees to the prevailing party in an application under this subsection.

17 **SECTION 5.** A new section to chapter 44-04 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Domestic violence record information of law enforcement exempt.** The address,
20 telephone number, or any identifying information that, if released, could reasonably be used to
21 locate a victim or alleged victim of domestic violence contained in any record maintained by a
22 law enforcement facility is exempt from section 44-04-18 and may be redacted from the record
23 before it is released.

24 **SECTION 6. AMENDMENT.** Subsections 2, 6, and 8 of section 44-04-18 of the North
25 Dakota Century Code are amended and reenacted as follows:

26 2. Upon request for a copy of specific public records, any entity subject to
27 subsection 1 shall furnish the requester one copy of the public records requested.
28 A request need not be made in person or in writing, and the copy must be mailed
29 upon request. A public entity may charge up to twenty-five cents per impression of
30 a paper copy. As used in this section, "paper copy" means a one-sided or
31 two-sided duplicated copy of a size not more than eight and one-half by fourteen

1 inches [19.05 to 35.56 centimeters]. For any copy of a record that is not a paper
2 copy as defined in this section, the public entity may charge a reasonable fee for
3 making the copy. As used in this section, "reasonable fee" means the actual cost
4 to the public entity of making the copy, including labor, materials, and equipment.
5 The entity may charge for the actual cost of postage to mail a copy of a record. An
6 entity may require payment before locating, redacting, making, or mailing the copy;
7 ~~or both~~. An entity may impose a fee not exceeding twenty-five dollars per hour per
8 request, excluding the initial hour, for locating records if locating the records
9 requires more than one hour. An entity may impose a fee not exceeding
10 twenty-five dollars per hour per request, excluding the initial hour, for excising
11 confidential or closed material under section 44-04-18.10. If the entity is not
12 authorized to use the fees to cover the cost of providing or mailing the copy, or
13 both, or if a copy machine is not readily available, the entity may make
14 arrangements for the copy to be provided or mailed, or both, by another entity,
15 public or private, and the requester shall pay the fee to that other entity. This
16 subsection does not apply to copies of public records for which a different fee is
17 specifically provided by law.

18 6. Any request under this section for records in the possession of a public entity by a
19 party to a criminal or civil action or ~~adversarial-administrative~~ adjudicative
20 proceeding as defined in subsection 1 of section 28-32-01 in which the public entity
21 is a party, or by an agent of the party, must comply with applicable discovery rules
22 and be made to the attorney representing that entity in the criminal or civil action or
23 ~~adversarial-administrative~~ adjudicative proceeding. The public entity may deny a
24 request from a party or an agent of a party under this subsection if the request
25 seeks records that are privileged under applicable discovery rules.

26 8. This section is violated when a person's right to review or receive a copy of a
27 record that is not exempt or confidential is denied or unreasonably delayed or
28 when a fee is charged in excess of the amount authorized in ~~subsection~~
29 subsections 2 and 3.

30 **SECTION 7. AMENDMENT.** Subsections 1 and 6 of section 44-04-18.7 of the North
31 Dakota Century Code are amended and reenacted as follows:

- 1 1. Active criminal intelligence information and active criminal investigative information
2 are not subject to section 44-04-18 and section 6 of article XI of the Constitution of
3 North Dakota. A criminal justice agency shall maintain a list of all files containing
4 active criminal intelligence and investigative information which have been in
5 existence for more than one year. With respect to each file, the list must contain
6 the file's number or other identifying characteristic and the date the file was
7 established. The list required under this subsection is subject to section 44-04-18.
8 ~~Criminal intelligence and investigative information that is not considered "active" is~~
9 ~~not subject to section 44-04-18 and section 6 of article XI of the Constitution of~~
10 ~~North Dakota to the extent that the information is personal information. Personal~~
11 information of any person contained in an active or nonactive file is an exempt
12 record as defined in subsection 5 of section 44-04-17.1.
13 6. "Personal information" means a person's medical ~~information~~ records; motor
14 vehicle operator's identification number; social security number; ~~and~~ any credit,
15 debit, or electronic fund transfer card number; and any financial account numbers.

16 **SECTION 8. AMENDMENT.** Subsection 4 of section 44-04-18.10 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 4. Unless otherwise prohibited by federal law, records of a public entity which are
19 otherwise closed or confidential may be disclosed to any public entity or federal
20 agency for the purpose of law enforcement or collection of debts owed to a public
21 entity, provided that the records are not used for other purposes and the closed or
22 confidential nature of the records is otherwise maintained. For the purpose of this
23 subsection, "public entity" is limited to those entities defined in subdivision a or b of
24 subsection 12 of section 44-04-17.1.

25 **SECTION 9. AMENDMENT.** Section 44-04-18.13 of the North Dakota Century Code is
26 amended and reenacted as follows:

- 27 **44-04-18.13. Lists of children minors.** Any record of a public entity that is a
28 compilation of ~~children's~~ minor's names, addresses, phone numbers, or any combination
29 thereof, is exempt.

30 **SECTION 10. AMENDMENT.** Subsection 2 of section 44-04-28 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 2. A social security number may be released:
- 2 a. For purposes of participation in retirement or other employment benefits
- 3 programs; ~~or~~
- 4 b. As authorized by the individual to whom the social security number is
- 5 assigned, that individual's lawful agent or guardian, or by order of a court; or
- 6 c. To another public entity or its agents, employees, or contractors if disclosure
- 7 is necessary for the receiving entity to perform its duties and responsibilities.
- 8 The receiving governmental entity and its agents, employees, and contractors
- 9 shall maintain the confidential status of the numbers.

10 **SECTION 11. AMENDMENT.** Section 57-40.6-07 of the North Dakota Century Code is

11 amended and reenacted as follows:

12 **57-40.6-07. Use of the furnished information.** Unpublished names and telephone

13 numbers generated by a 911 coordinator or 911 public safety answering point or provided to a

14 911 coordinator or public safety answering point under section 57-40.6-06 are confidential and

15 may be used only for verifying the location or identity, or both, for response purposes, of a

16 person calling a 911 answering point for emergency help or by the 911 coordinator or public

17 safety answering point for the purpose of a public safety agency notifying a person of an

18 emergency. Published names and telephone numbers maintained by a 911 coordinator or

19 public safety answering point are exempt records as defined in section 44-04-17.1 but must be

20 provided upon request to the treasurer and auditor of the county served by the 911 coordinator

21 for the purpose of verifying and correcting names and addresses used for official purposes. A

22 record obtained for the purpose of providing services in an emergency and which reveals the

23 address of a person requesting emergency service or reporting an emergency by accessing an

24 emergency telephone number 911 system is exempt from section 44-04-18 and may be

25 redacted from the record before it is released.