

# OCCUPATIONS AND PROFESSIONS

## CHAPTER 356

### SENATE BILL NO. 2119

(Political Subdivisions Committee)

(At the request of the Abstracters' Board of Examiners)

### ABTRACTOR RECORDS

AN ACT to amend and reenact sections 43-01-09, 43-01-14, and 43-01-23 of the North Dakota Century Code, relating to licensed abstractor records.

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

**SECTION 1. AMENDMENT.** Section 43-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-09. Requirements of abstractor of title - Records - Certificate of registration bond or liability policy.** Before any person, firm, corporation, or limited liability company may engage in the business of making and compiling abstracts of title to real estate within this state, the person or it shall:

1. Have ~~for use and maintain~~ in such business a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the person or it is engaged in business, or shall have been engaged in good faith in the preparation of such ~~books or records~~ for not less than six months;
2. Obtain a certificate of authority as is required by this chapter;
3. File the bond or abstractor's liability policy required under section 43-01-11; and
4. Have in charge of such business a registered abstractor, as defined by this chapter.

**SECTION 2. AMENDMENT.** Section 43-01-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-14. Certification of authority - Fee - Renewal.** A certificate of authority must be issued to an applicant who successfully passes the examination of the board and complies with the other provisions of this chapter, upon the payment of the registration fee fixed by the board not exceeding one hundred dollars, which must be in addition to the examination fee. A certificate is valid for five years after the date thereof. A certificate must be renewed by the board upon application, made within thirty days prior to the expiration date, accompanied by payment of a fee fixed by the board not exceeding one hundred dollars and an affidavit that the applicant has ~~for use and maintains~~ in the applicant's business a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the applicant has the applicant's place of

business or has been engaged in good faith in the preparation of such ~~books or~~ records for not less than six months.

**SECTION 3. AMENDMENT.** Section 43-01-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-23. Temporary authority of an abstractor to act in an additional county.**

1. If it appears to the board that there is no abstractor authorized to engage in and carry on the business of an abstractor of real estate titles in a county or that there is an authorized abstractor in a county who is unable to perform the duties of an abstractor due to death, disability, a disaster or emergency, or disciplinary action, the board may authorize an individual or organization having a certificate of authority and certificate of registration to operate in another county to operate in the county having no abstractor through the issuance of a temporary certificate of authority. The board may not charge an abstractor for the temporary certificate of authority. The board may require additional security than provided under section 43-01-11. The abstractor operating under the temporary certificate of authority is not required to have a complete ~~set of abstract books or records of tract index~~ and all instruments of record in the office of the recorder in and for the county in which the abstractor is temporarily engaged in business, nor need the abstractor have been engaged in the preparation of such ~~books or~~ records. The temporary certificate of authority may not exceed such time as the board has determined an abstractor having a regular certificate of authority and certificate of registration is able to engage in and carry on the business of an abstractor of real estate titles in the county, but the abstractor holding the temporary certificate of authority may complete any work already engaged. The abstractor having a temporary certificate of authority may seek to operate in the county on a regular basis through compliance with all statutory requirements.
2. The board may establish a fund to provide for additional expenses of an abstractor operating under a temporary certificate of authority. The fund may be paid for by an additional fee fixed by the board of no more than fifty dollars per year for each certificate of registration. The fund may not exceed five thousand dollars. The board may pay the expenses, including mileage, meals, and lodging, of an abstractor operating under a temporary certificate of authority at the rates established for state employees on official business.

Approved March 5, 2007

Filed March 6, 2007

## CHAPTER 357

### SENATE BILL NO. 2217

(Senator Holmberg)

### ABSTRACTER FEES AND STUDY

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to abstracter fees; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 43-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-01-18. Fees chargeable by abstracter.** An abstracter may charge no more than the following fees for making and certifying to an abstract:

1. For each entry on an abstract or continuation ~~thereof~~ of an entry on an abstract, six ten dollars.
2. For a complete certification covering the records of the several county offices, ~~seventy-five~~ one hundred dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title ~~an additional fee of nine dollars,~~ and for each quarter section [64.75 hectares] or portion thereof of a quarter section in excess of one, may be charged an additional fee of ten dollars.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, ~~an additional fee of nine dollars,~~ and for the premises in each additional block in excess of one, may be charged an additional fee of ten dollars.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, and state tax liens, mechanics' liens and mechanics' lien notices, three five dollars and fees charged to the abstracter by a governmental agencies agency or governmental entities entity.
6. ~~For all miscellaneous instruments, two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.~~
7. The fees as may be fixed by special statute.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE.** The legislative council shall consider studying, during the 2007-08 interim, abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 4, 2007

Filed April 5, 2007

## CHAPTER 358

### HOUSE BILL NO. 1477

(Representatives Kroeber, Hanson, Heller, Kreidt)  
(Senator Heitkamp)

### BARBERING PRACTICE

AN ACT to create and enact a new section to chapter 43-04 of the North Dakota Century Code, relating to prohibited acts regarding the practice of barbering.

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

**SECTION 1.** A new section to chapter 43-04 of the North Dakota Century Code is created and enacted as follows:

**Deceptive acts - Barber poles.** A person may not advertise, hold out to the public, or represent in any manner that the person is authorized to practice barbering unless the person is authorized under this chapter to practice barbering or authorized to employ or lease space to a barber. A person not authorized to practice barbering or not authorized to employ or lease space to a barber may not place a barber pole in a location that would create or tend to create the impression to members of the general public that a business located near the barber pole is a barbershop unless the location of the barber pole is related to a business authorized to operate a barbershop. As used in this section, barber pole means a red, white, or blue striped vertical cylinder with a ball located on the top, bottom, or top and bottom of the cylinder, or any object or facsimile of similar nature, regardless of the actual shape or coloring, if the object or facsimile would tend to create an impression to members of the general public that a business located near the object is a barbershop.

Approved March 30, 2007

Filed March 30, 2007

## CHAPTER 359

### SENATE BILL NO. 2158

(Senators Hacker, Heitkamp, J. Lee)  
(Representatives Carlson, Dietrich, Koppelman)

## CONTRACTOR LICENSING

AN ACT to amend and reenact section 43-07-02, subsection 3 of section 43-07-04, section 43-07-10, and subsection 3 of section 43-07-14 of the North Dakota Century Code, relating to contractor licenses and unlicensed contractors.

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

**SECTION 1. AMENDMENT.** Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-02. License required.** A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

**SECTION 2. AMENDMENT.** Subsection 3 of section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
  - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
  - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
  - c. Maintain an active status of a corporation or registration as a foreign corporation;
  - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
  - e. File or renew a trade name registration as required by chapter 47-25;
  - f. ~~File or renew~~ Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
  - g. ~~File or renew~~ Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.

**SECTION 3. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.**

1. 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 twenty-five 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 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 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, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.
2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. 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 the registrar shall return the application to the contractor who

then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

**SECTION 4. AMENDMENT.** Subsection 3 of section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Any act or omission under this section may also constitute grounds for the attorney general to bring an action under chapter 51-15 against the licensee or any unlicensed person engaging in the business or acting in the capacity of a contractor in violation of section 43-07-02 and subjects the licensee or any such unlicensed person to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.

Approved March 5, 2007

Filed March 6, 2007



## CHAPTER 360

### HOUSE BILL NO. 1218

(Representatives Klein, Ekstrom, Karls)  
(Senators Dever, Horne, Robinson)

## ELECTRICIAN QUALIFICATIONS AND STUDY

AN ACT to amend and reenact section 43-09-11 of the North Dakota Century Code, relating to qualifications of electricians; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Section 43-09-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-09-11. Qualifications as to experience.** An applicant for an electrician's license must have the following experience and training:

1. ~~Master~~ For licensure as a master electrician, an applicant must have completed one year's experience as a licensed journeyman electrician.
2. ~~Journeyman~~ For licensure as a journeyman electrician, ~~four years'~~ an applicant must have:
  - a. Completed eight thousand hours experience in installing and repairing electrical wiring, apparatus, and equipment, which experience may not be obtained in less than three years.
  - b. Effective for an applicant who registered with the board as an apprentice after January 31, 2008, completed at least one of the following:
    - (1) Successfully completed apprenticeship training approved by the federal bureau of apprenticeship and training and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment.
    - (2) Successfully completed an appropriate course of study, which may not be less than two years or the equivalent of two years, at a board-approved institution of higher education and completed eight thousand hours' experience in installing and repairing electrical wiring, apparatus, and equipment. The board may determine equivalent hours of education that may be applied as a credit against the eight thousand hours' experience requirement under this paragraph.
3. ~~Class~~ For licensure as a class B electrician, eighteen months' experience in farmstead or residential wiring.

**SECTION 2. LEGISLATIVE COUNCIL STUDY - LICENSURE OF ELECTRICIANS.** The legislative council shall consider studying, during the 2007-08 interim, the licensure, training, and classroom education requirements for electricians in this state; reciprocity agreements with other states and the effect of those agreements on standards in this state; and the effect of the licensure, training, classroom education requirements, and reciprocity agreements on the availability of qualified electricians in North Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved April 10, 2007  
Filed April 11, 2007

## CHAPTER 361

### HOUSE BILL NO. 1118

(Human Services Committee)  
(At the request of the Board of Nursing)

## NURSE LICENSURE AND REGISTRATION

AN ACT to amend and reenact sections 43-12.1-08, 43-12.1-09, and 43-12.1-10 of the North Dakota Century Code, relating to the issuance of limited licenses and registrations by the board of nursing and the requirements of nurse applicants for license by endorsement; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-12.1-08. Duties of the board.**

1. The board shall regulate the practice of nursing. Regulation of the practice of nursing must ensure that a person may not practice or offer to practice nursing or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, or unlicensed assistive person, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter.
2. The board shall:
  - a. Enforce this chapter.
  - b. Adopt rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing associations and other affected parties.
  - c. Appoint and employ a registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
  - d. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
  - e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
  - f. Issue and renew limited licenses or registrations to individuals requiring accommodation to practice nursing or assist in the practice of nursing.
  - g. Establish confidential programs for the rehabilitation of nurses with workplace impairments.

- h. Establish a nursing student loan program funded by license fees to encourage individuals to enter and advance in the nursing profession.
- i. Establish a registry of individuals licensed or registered by the board.
- j. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- k. Conduct and support projects pertaining to nursing education and practice.
- l. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
- m. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

**SECTION 2. AMENDMENT.** Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09. Initial licensure and registration.**

1. The board shall license and register nursing and unlicensed assistive person applicants. The board shall adopt rules establishing qualifications for initial nursing licensure and unlicensed assistive person registration and for issuing limited licenses and registrations pursuant to subsection 3.
2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
  - a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
    - (1) Submit a completed application and appropriate fee as established by the board.
    - (2) Submit an official transcript showing completion of an in-state nursing education program or a board-approved out-of-state nursing education program preparing for the level of licensure sought. The board shall adopt rules establishing standards for the approval of out-of-state nursing education programs. These standards for out-of-state programs must include consideration of whether the program is accredited by the national league for nursing accrediting commission, incorporated, or the commission on collegiate nursing education and whether the program meets the requirements of the state in which the program is provided.
    - (3) Pass an examination approved by the board.

- b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit an official transcript showing completion of a nursing education program preparing for the level of licensure sought.
  - (3) Submit proof of initial licensure by examination with the examination meeting North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure.
  - (4) Submit evidence of current unencumbered licensure in another state or meet continued competency requirements as established by the board.
  - (5) Notwithstanding the foregoing requirements of this subdivision, if an applicant for licensure as a licensed practical nurse has been licensed in another state as a licensed practical nurse based upon completion of a registered nurse education program and has had at least twenty-four months of unencumbered practice as a licensed practical nurse in another state within the five-year period preceding the application, then the applicant is not required to meet any additional educational requirements for licensure as a licensed practical nurse.
- c. An applicant for licensure as an advanced practice registered nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board. An advanced practice registered nurse applicant must have a graduate degree with a nursing focus or must have completed the educational requirements in effect when the applicant was initially licensed.
  - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
- d. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that applicant meets the requirements that were in place in this

- state at the time the applicant qualified for initial advanced practice licensure in that state.
- e. An applicant for unlicensed assistive person registration shall:
    - (1) Submit a completed application and the appropriate fee as established by the board.
    - (2) Provide verification of appropriate training or evidence of certification or evaluation in the performance of basic nursing interventions.
  - f. An applicant for licensure as a specialty practice registered nurse shall:
    - (1) Submit a completed application and appropriate fee as established by the board.
    - (2) Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board. A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.
    - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
3. For good cause shown, the board may issue a limited license or registration to an applicant.

**SECTION 3. AMENDMENT.** Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-10. Renewal of license or registration - Reactivation.**

1. The board shall renew a current license to practice as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse if the licensee submits a renewal application, submits the appropriate fee established by the board, and meets all requirements for licensure. If a licensee does not renew a license before the license expires, the board shall reactivate that license if that licensee meets the reactivation requirements set by the board.
2. The board shall renew the registration of an unlicensed assistive person if the registrant submits a renewal application, the appropriate fee established by the board, and documentation of competency by the employer or evidence of certification or evaluation. A lapsed unlicensed assistive person registration may be reactivated upon submission of the application, payment of the appropriate fee established by the board, and documentation of competency or evidence of certification or evaluation.
3. For good cause shown, the board may issue a limited license or registration to a licensee or registrant. The board shall adopt rules

establishing qualifications for issuing limited licenses and registrations pursuant to this subsection.

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

Approved March 23, 2007

Filed March 23, 2007

## CHAPTER 362

### HOUSE BILL NO. 1123

(Human Services Committee)

(At the request of the State Board of Optometry)

## OPTOMETRIST REGULATION AND LICENSING

AN ACT to amend and reenact subsections 2 and 3 of section 43-13-02, sections 43-13-05, 43-13-06, and 43-13-11, subsection 3 of section 43-13-13.2, section 43-13-20, subsection 7 of section 43-13-22, and section 43-13-28 of the North Dakota Century Code, relating to regulation and licensing of optometrists.

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

**SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 43-13-02 of the North Dakota Century Code are amended and reenacted as follows:

2. Student interns who are currently enrolled in an optometry school or college accredited by the accreditation council on optometric education of the American optometric association, or its successor agency, or who have graduated no more than three months prior, and are under the immediate and direct supervision of a licensed optometrist.
3. Physicians and surgeons ~~authorized to practice medicine in this state, except that the provisions of section 43-13-28 remain applicable~~ licensed under chapter 43-17.

**SECTION 2. AMENDMENT.** Section 43-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-05. Secretary of board - Duties - Record - Custodian of fees - Report.** The secretary of the board, or the secretary's designee, has the following duties:

1. Keep a full record of the proceedings of the board.
2. Be custodian of all fees coming into the possession of the board.
3. At such times as may be required by the board, furnish a complete statement of receipts and disbursements under oath, together with vouchers, receipts, and such other evidence of the receipts and disbursements as may be required by the board.

**SECTION 3. AMENDMENT.** Section 43-13-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-06. Secretary of board - Bond.** The secretary of the board, or the secretary's designee in the event the duties have been delegated to another, must be bonded for the faithful discharge of duties in such amount as may be prescribed by the board.



**SECTION 4. AMENDMENT.** Section 43-13-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-11. Records of board.** The record of the proceedings of the board kept by the secretary, or the secretary's designee, at all reasonable times must be open to public inspection. ~~Such~~ The record also must contain, ~~under permanent binding,~~ a registry list of all persons licensed by the board, together with renewals and revocations of licenses. The record constitutes the official registry of all persons licensed to practice optometry in this state.

**SECTION 5. AMENDMENT.** Subsection 3 of section 43-13-13.2 of the North Dakota Century Code is amended and reenacted as follows:

3. The board shall ~~notify~~ provide the board of pharmacy ~~in writing, and on an annual basis or when other optometrists are certified,~~ of the specific optometrists certified by the board upon request a list of licensed optometrists certified in the use of pharmaceutical agents.

**SECTION 6. AMENDMENT.** Section 43-13-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-20. Term of license - Renewal - Annual license fee - Continuing educational requirements.** A license to practice optometry in the state may be issued for one year only, but may be renewed by paying to the secretary of the board, during the month of ~~January~~ December of each year, the license fee for ~~that~~ the following year, ~~and as of January 1, 1974,~~ by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend ~~such the~~ education programs if an applicant furnishes the board with sufficient proof that the applicant has been unable to attend ~~such the~~ education programs during a year, which proof ~~shall~~ must include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend ~~such the~~ educational programs. The license fee for each year must be determined annually by the North Dakota state board of optometry and be a reasonable sum fixed by the board. The board shall adopt reasonable rules ~~which that~~ must state the type of optometric educational programs which are approved. The board also shall ~~also~~ designate the number of classroom hours which must be attended, which ~~will~~ must be a reasonable amount for each three-year period. Any person who does not meet these requirements by ~~February~~ January first of the year in which the license fee becomes due and payable is in default and may be reinstated by the board upon the payment of an additional sum reasonably fixed by the board, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. ~~Nothing contained herein requires~~ This section does not require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

**SECTION 7. AMENDMENT.** Subsection 7 of section 43-13-22 of the North Dakota Century Code is amended and reenacted as follows:

7. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than ~~one who holds a valid unrevoked license as an optometrist in this state and who has an actual legal residence within this state~~ a licensed optometrist, a physician licensed

under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

**SECTION 8. AMENDMENT.** Section 43-13-28 of the North Dakota Century Code is amended and reenacted as follows:

**43-13-28. Prohibitions.** It is unlawful for any ~~corporation, limited liability company, organization, association, group, or individual person~~ who is not the holder of a license to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or ~~other basis or by associating upon a lease or any other profit-sharing arrangement with~~ a licensed optometrist ~~or licensed physician~~ except as permitted by the rules and regulations of the board. The provisions of this section do not apply to ~~cooperative or to nonprofit associations or nonprofit corporations~~ a physician licensed under chapter 43-17, a hospital, or a clinic operated by licensed optometrists or by licensed physicians.

Approved March 6, 2007

Filed March 7, 2007

## CHAPTER 363

### HOUSE BILL NO. 1054

(Human Services Committee)

(At the request of the State Board of Pharmacy)

## PHARMACY CLOSINGS AND PRACTICE

AN ACT to create and enact sections 43-15-38.1 and 43-15-42.3 of the North Dakota Century Code, relating to pharmacy closings and reporting requirements; to amend and reenact sections 43-15-01, 43-15-05, 43-15-10, and 43-15-25.2 of the North Dakota Century Code, relating to the practice of pharmacy; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Administration" means the direct application of a drug to the body of a patient.
  - a. The term includes:
    - (1) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available;
    - (2) Immunization and vaccination by injection of an individual who is more than eighteen years of age, upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner; and
    - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is more than eighteen years of age upon the order of a physician or nurse practitioner authorized to prescribe such a drug.
  - b. The term does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.
2. "Automated dispensing system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications and which collects, controls, and monitors all transaction information.
3. "Board" means the state board of pharmacy.

- ~~3-~~ 4. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:
- As the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice; or
  - For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.

Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

- ~~4-~~ 5. "Confidential information" means individually identifiable health information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling.
- ~~5-~~ 6. "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.
- ~~6-~~ 7. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or North Dakota law to be prescribed by a practitioner and dispensed by a pharmacist.
- ~~7-~~ 8. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the order that has been reduced to writing in the patient's record, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.
- ~~8-~~ 9. "Distribute" means the delivery of a drug other than by dispensing or administering.
- ~~9-~~ 10. "Drug" or "drugs" means:
- Articles recognized as drugs in the official United States pharmacopeia, official national formulary, official homeopathic pharmacopeia, other drug compendium, or any supplement to any of them;
  - Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal;
  - Articles other than food intended to affect the structure or any function of the body of man or other animals; and
  - Articles intended for use as a component of any articles specified in subdivision a, b, or c.
- ~~10-~~ 11. "Drug regimen review" includes the following activities:

- a. Evaluation of the prescription drug orders and patient records for:
    - (1) Known allergies;
    - (2) Rational therapy-contraindications;
    - (3) Reasonable dose and route of administration; and
    - (4) Reasonable directions for use.
  - b. Evaluation of the prescription drug orders and patient records for duplication of therapy.
  - c. Evaluation of the prescription drug orders and patient records for interactions:
    - (1) Drug-drug;
    - (2) Drug-food;
    - (3) Drug-disease; and
    - (4) Adverse drug reactions.
  - d. Evaluation of the prescription drug orders and patient records for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.
44. 12. "Emergency pharmacy practice" means in the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two-hour supply of the prescribed medication, provided that:
- a. The prescription is not for a controlled substance listed in schedule II;
  - b. The pharmaceutical is essential to the maintenance of life or to the continuation of therapy;
  - c. In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;
  - d. The pharmacist properly records the dispensing; and
  - e. The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.
42. 13. "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and North Dakota law or regulation.

- ~~43.~~ 14. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a drug:
- a. By a pharmacist or practitioner as an incident to dispensing or administering of a drug in the course of the person's professional practice; or
  - b. By a practitioner or by the practitioner's authorization under supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.
- ~~44.~~ 15. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.
- ~~45.~~ 16. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.
- ~~46.~~ 17. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this state and the federal government.
- ~~47.~~ 18. "Original package" means the original carton, case, can, box, vial, bottle, or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.
- ~~48.~~ 19. "Person" means an individual, corporation, limited liability company, partnership, association, or any other legal entity.
- ~~49.~~ 20. "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.
- ~~20.~~ 21. "Pharmacist" means a person to whom the board has issued a license to practice the profession of pharmacy whose license has not expired or been suspended.
- ~~24.~~ 22. "Pharmacy" or "drugstore" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the board.
- ~~22.~~ 23. "Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the

immediate personal supervision and control of a licensed pharmacist, as permitted by the board.

- ~~23.~~ 24. "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 for this storage; the responsibility for advising, consulting, and educating if necessary or 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; if appropriate and 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 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.
24. 25. "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.
25. 26. "Prescription" means any order for drugs or medical supplies, where such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded, or dispensed by a pharmacist or any order for drugs or medical supplies transmitted orally by a nurse licensed under chapter 43-12.1 as written and signed by such a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner.
26. 27. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one of the following:
- a. "Caution: Federal law prohibits dispensing without prescription";
  - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

- c. Rx only;

or a drug which is required by any applicable federal or North Dakota law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

- ~~27.~~ 28. "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling, and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.
- ~~28.~~ 29. "Wholesaler" means a person with facilities located in this state who buys for resale and distribution to persons other than consumers.

**SECTION 2. AMENDMENT.** Section 43-15-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-05. Compensation of board - Disposition of fees.** Each member of the board shall receive a per diem of ~~twenty~~ two hundred dollars for attendance at board meetings, and all actual and necessary expenses incurred in attending such meetings and in performing other official duties. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

<sup>189</sup> **SECTION 3. AMENDMENT.** Section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-10. Powers of board.** In addition to other powers provided by law, the board shall have the following powers and duties, which shall be exercised in conformity with chapter 28-32 in order to protect the public health, welfare, and safety:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician; or refuse to issue or renew, or suspend, revoke, restrict, or cancel, the license, permit, or ~~license~~ registration of any pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician, if any of the following grounds apply and the pharmacy, pharmacist, or ~~licensed pharmacist~~ pharmacy intern or pharmacy technician:
  - a. Is addicted to any alcohol or drug habit.

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<sup>189</sup> Section 43-15-10 was also amended by section 10 of Senate Bill No. 2260, chapter 115.



- b. Uses any advertising statements of a character tending to deceive or mislead the public.
  - c. Is subject to drug or alcohol dependency or abuse.
  - d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
  - e. Permits or engages an unauthorized person to practice pharmacy.
  - f. Is mentally or physically incompetent to handle pharmaceutical duties.
  - g. Is guilty of fraud, deception, or misrepresentation in passing the pharmacist examination.
  - h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or interns and technicians or the rules and regulations established by the board.
  - i. Is found to have engaged in unprofessional conduct as that term is defined by the rules of the board.
  - j. Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
  - k. Is found guilty by a court of competent jurisdiction of one or more of the following:
    - (1) A felony, as defined by the statutes of North Dakota.
    - (2) Any act involving moral turpitude or gross immorality.
    - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
  - l. Commits fraud or intentional misrepresentation in securing the issuance or renewal of a license or pharmacy permit.
  - m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.
  - n. Discloses confidential information to any person, except as authorized by law.
2. To prescribe rules and regulations not inconsistent with this chapter governing the cancellation or suspension of a license.
  3. To examine and license as pharmacist any applicant found entitled to such license.

4. To prescribe rules and regulations for the guidance of its members, officers, and employees, and to ensure the proper and orderly dispatch of its business.
5. To employ and pay such persons as it may deem necessary to inspect pharmacies in this state, investigate pharmacies for the information of the board, procure evidence in any proceeding pending before the board, or procure evidence in aid of any prosecution or action in any court commenced or about to be commenced by or against the board in relation to any matter in which the board has any duty to perform.
6. To employ and pay counsel to advise the board or to prosecute or defend any action or proceeding commenced by or against the board or pending before it.
7. To grant permits and renewals thereof for the establishment and operation of pharmacies.
8. Only for good cause to cancel, revoke, or suspend permits and renewals thereof for the establishment and operation of pharmacies.
9. To prescribe reasonable and nondiscriminatory rules and regulations in regard to granting, renewing, canceling, revoking, or suspending permits and renewals for establishing and operating pharmacies.
10. Action by the board canceling, revoking, suspending, or refusing to renew a permit to establish or operate a pharmacy shall not be enforced for thirty days after notice has been given an aggrieved party by the board, nor during the time that an appeal by such aggrieved party is pending and until such appeal is finally determined.
11. To prescribe reasonable rules and regulations relating to the physical design of space occupied by a pharmacy to ensure appropriate control of and safeguards over the contents of such pharmacy.
12. To regulate and control the practice of pharmacy in North Dakota.
13. To adopt, amend, and repeal rules for the regulation of pharmacies and pharmacists providing radiopharmaceutical services, including special training, education, and experience for pharmacists and physical design of space, safeguards, and equipment for pharmacies.
14. To adopt, amend, and repeal rules determined necessary by the board for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the director of the state department of health, and chapter 19-03.1.
15. The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, chapter 19-02.1 that pertains to drugs, chapters 19-03.1, 19-03.2, and 19-04, or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.

16. In addition to other remedies, the board may apply to the district court in the jurisdiction of an alleged violation, and that court has jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of chapter 43-15, chapter 19-02.1 pertaining to drugs, and chapter 19-03.1, whether or not there exists an adequate remedy at law. Whenever a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated, misbranded, mislabeled, or improperly identified, within the meaning of chapter 19-02.1, the representative shall affix to that drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated, misbranded, mislabeled, or improperly identified, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board or its agents or the court. No person may remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent, or, after summary proceedings have been instituted, without permission from the court.
17. When a drug or device detained or embargoed has been declared by such representative to be adulterated, misbranded, mislabeled, or improperly identified, the board shall, as soon as practical thereafter, petition the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated, misbranded, mislabeled, or improperly identified, the board shall direct the immediate removal of the tag or other marking. If the court finds the detained or embargoed drug or device is adulterated, misbranded, mislabeled, or improperly identified, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage, and other proper expense shall be borne by the owner of such drug or device. When the adulteration, misbranding, mislabeling, or improper identification can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner for labeling or processing under the supervision of a board representative. Expense of supervision shall be paid by the owner. Bond posted shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid. Nothing in this section shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.
18. The board shall establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care.
19. To adopt, amend, and repeal rules as may be deemed necessary by the board to register pharmacy technicians pursuant to qualifications established by the board, to charge a pharmacy technician an annual registration fee not to exceed fifty dollars, to specify tasks associated

with and included in the practice of pharmacy which may be delegated by a licensed pharmacist to a registered pharmacy technician, to provide for suspension or revocation of a pharmacy technician's registration, and to regulate and control pharmacy technicians. The board may allocate up to fifty percent of the amount of the registration fee to an appropriate pharmacy technician association for its general operating expenses, including pharmacy technician education and development standards.

20. To require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.

**SECTION 4. AMENDMENT.** Section 43-15-25.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-15-25.2. 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~~ 24 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 5.** Section 43-15-38.1 of the North Dakota Century Code is created and enacted as follows:

**43-15-38.1. Closing a pharmacy.** The permitholder and the pharmacist in charge are jointly responsible to follow the procedures outlined in the rules for closing a pharmacy.

**SECTION 6.** Section 43-15-42.3 of the North Dakota Century Code is created and enacted as follows:

**43-15-42.3. Reporting requirements - Penalty.** A pharmacist, pharmacy permitholder, pharmacy intern, pharmacy technician, health care institution in the state, state agency, or law enforcement agency in the state having actual knowledge that a pharmacist, pharmacy intern, or pharmacy technician may have committed any of the grounds for disciplinary action provided by law or rules adopted by the board shall promptly report that information in writing to the state board of pharmacy. A pharmacist, pharmacy technician, or institution from which the pharmacist or pharmacy technician voluntarily resigns, or voluntarily limits that individual's staff privileges, shall report the actions of the licensee or registrant to the state board of pharmacy if that action occurs while the licensee or registrant is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible professional incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee or registrant, the board's investigative committee may investigate any evidence that appears to show a licensee or registrant is committing, or may have committed, any of the grounds for disciplinary action provided by law or 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 a person who makes the report under this section is presumed. A report to the impaired pharmacist program, the pharm-assist committee, of the North Dakota pharmacists association is considered reporting under this section. 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 pharmacist, pharmacy permitholder, pharmacy intern, or pharmacy technician who violates this section is guilty of a class B misdemeanor and is subject to administrative action by the state board of pharmacy as specified by law or by rule.

Approved March 7, 2007

Filed March 8, 2007

## CHAPTER 364

### HOUSE BILL NO. 1299

(Representative Porter)

(Senator Krebsbach)

### PHARMACY PERMITS AND STUDY

AN ACT to amend and reenact section 43-15-35 of the North Dakota Century Code, relating to postgraduate medical residency training program pharmacies; and to provide for a legislative council study.

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

<sup>190</sup> **SECTION 1. AMENDMENT.** Section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-15-35. Requirements for permit to operate pharmacy - Exceptions.**

1. The board shall issue a permit to operate a pharmacy, or a renewal permit, upon satisfactory proof of all of the following:
  4. a. The pharmacy will be conducted in full compliance with existing laws and with the rules and regulations established by the board.
  2. b. The equipment and facilities of the pharmacy are such that prescriptions can be filled accurately and properly, and United States pharmacopeia and national formulary preparations properly compounded and so that it may be operated and maintained in a manner that will not endanger public health and safety.
  3. c. The pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary, and orderly manner.
  4. d. The management of the pharmacy is under the personal charge of a pharmacist duly licensed under the laws of this state.
  5. e. The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; ~~or~~ or a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

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<sup>190</sup> Section 43-15-35 was also amended by section 1 of House Bill No. 1350, chapter 365.

- 6- f. Suitable reference sources either in book or electronic data form, are 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 American society of health-system pharmacists formulary, or other suitable references pertinent to the practice carried on in the licensed pharmacy.
2. The provisions of ~~subsection 5 shall~~ subdivision e of subsection 1 do not apply to the:
- a. The holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, provided that any such permitholder ~~who~~ that discontinues operations under such permit or fails to renew such permit upon expiration ~~shall is not thereafter be~~ exempt from the provisions of ~~subsection 5 subdivision e of subsection 1~~ as to the discontinued or lapsed permit. ~~The provisions of subsection 5 shall not apply to~~
- b. A hospital ~~pharmacies~~ pharmacy furnishing service only to patients in that hospital.
- c. The applicant for a permit to operate a pharmacy which is a hospital, if the pharmacy for which the hospital seeks a permit to operate is a retail pharmacy that is the sole provider of pharmacy services in the community and is a retail pharmacy that was in existence before the hospital took over operations. A hospital operating a pharmacy under this subdivision may operate the pharmacy at any location in the community.

## SECTION 2. LEGISLATIVE COUNCIL STUDY - REGULATION AND LICENSING OF PHARMACISTS.

1. The legislative council shall consider studying, during the 2007-08 interim, the regulation and licensing of pharmacists in this state. The study must include an examination of:
- a. The state board of pharmacy, the board's size, the manner of board membership appointment, and whether the board is representative of commercial and noncommercial pharmacists;
- b. The state's demographics and the impact changing demographics in rural areas will have on the ability of small, locally owned pharmacies to remain economically viable and on the ability of rural residents to access low-cost pharmaceuticals and pharmacy and pharmacists' services;
- c. The pharmacy ownership restrictions, the relevance of those restrictions in terms of marketplace competition, and the impact of those restrictions on the price and availability of pharmaceuticals and on pharmacy and pharmacists' services; and
- d. The statutory interplay between the state board of pharmacy and the North Dakota pharmaceutical association and whether the regulatory function of the board conflicts with the advocacy function of the association.

2. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved March 23, 2007

Filed March 23, 2007



## CHAPTER 365

### HOUSE BILL NO. 1350

(Representatives Svedjan, Dietrich, Metcalf)  
(Senators Erbele, Holmberg, Mathern)

### PHARMACY PERMITS

AN ACT to amend and reenact section 43-15-35 of the North Dakota Century Code, relating to postgraduate medical residency training program pharmacies.

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

<sup>191</sup> **SECTION 1. AMENDMENT.** Section 43-15-35 of the North Dakota Century Code is amended and reenacted as follows:

#### **43-15-35. Requirements for permit to operate pharmacy - Exceptions.**

1. The board shall issue a permit to operate a pharmacy, or a renewal permit, upon satisfactory proof of all of the following:
  - ~~4.~~ a. The pharmacy will be conducted in full compliance with existing laws and with the rules and regulations established by the board.
  - ~~2.~~ b. The equipment and facilities of the pharmacy are such that prescriptions can be filled accurately and properly, and United States pharmacopeia and national formulary preparations properly compounded and so that it may be operated and maintained in a manner that will not endanger public health and safety.
  - ~~3.~~ c. The pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary, and orderly manner.
  - ~~4.~~ d. The management of the pharmacy is under the personal charge of a pharmacist duly licensed under the laws of this state.
  - ~~5.~~ e. The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; ~~or~~; a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; ~~or~~; a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.

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<sup>191</sup> Section 43-15-35 was also amended by section 1 of House Bill No. 1299, chapter 364.

- 6- f. 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 American society of health-system pharmacists formulary, or other suitable references pertinent to the practice carried on in the licensed pharmacy.
2. The provisions of ~~subsection 5 shall~~ subdivision e of subsection 1 do not apply to the:
- a. The holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, provided that any such permitholder ~~who~~ that discontinues operations under such permit or fails to renew such permit upon expiration ~~shall~~ is not thereafter be exempt from the provisions of ~~subsection 5 subdivision e of subsection 1~~ as to the discontinued or lapsed permit. ~~The provisions of subsection 5 shall not apply to~~
- b. A hospital ~~pharmacies~~ pharmacy furnishing service only to patients in that hospital.
- c. The applicant for a permit to operate a pharmacy which is the owner of a postgraduate medical residency training program if the pharmacy is collocated with and is run in direct conjunction with the postgraduate medical residency training program. For purposes of this subdivision, the postgraduate medical residency training program must be accredited by the accreditation council on graduate medical education or other national accrediting organization.

Approved March 23, 2007

Filed March 23, 2007

## CHAPTER 366

### HOUSE BILL NO. 1256

(Representatives Weisz, Pollert, Thoreson)  
(Senators Christmann, J. Lee, Robinson)

## LEGEND PRESCRIPTION DRUG AND DEVICE PROGRAM

AN ACT to create and enact chapter 43-15.2 of the North Dakota Century Code, relating to the creation of a legend prescription drug and device donation and repository program; and to provide an appropriation.

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

**SECTION 1.** Chapter 43-15.2 of the North Dakota Century Code is created and enacted as follows:

**43-15.2-01. Definitions.** In addition to the definitions under section 43-15-01, in this chapter unless the context otherwise requires:

1. "Donor" means a person that donates to the program legend drugs, devices, or supplies needed to administer such drugs.
2. "Participant" means a practitioner or pharmacy that has elected to participate in the program and accepts legend drugs, devices, and supplies from donors for the program.
3. "Program" means the legend drug donation and repository program established under this chapter.
4. "Supplies" means any supplies used in the administration of a legend drug.

**43-15.2-02. Administration.**

1. The state board of pharmacy shall establish and contract with a third party to administer a legend drug donation and repository program.
2. The board may develop and maintain a participant registry for the program. A participant registry created under this subsection must include the name, address, and telephone number of the participants. A participant registry created under this subsection must be available through the board or on the board's web site.
3. The board may cooperate with nongovernmental organizations to maintain a web-based list of legend drugs, devices, or supplies that have been donated and are available through the program and the participants from which the donated items may be available.

**43-15.2-03. Conditions for participation.**

1. A donor may donate legend drugs, devices, or supplies to the program through a practitioner or pharmacy that meets the criteria established for such participation. Legend drugs, devices, or supplies may not be donated directly to a specific patient and donated items may not be resold.
2. The items donated to the program may be prescribed for use by an individual by a practitioner who is authorized by law to prescribe and only a participant may dispense donated items.

**43-15.2-04. Conditions for acceptance of a donation.**

1. A drug donated, prescribed, or dispensed under the program must be in the original, unopened, sealed, and tamper-evident unit dose packaging, except a drug packaged in single-unit doses may be accepted and dispensed if the outside packaging has been opened and the single-unit-dose package is unopened.
2. A drug may not be accepted or dispensed under the program if the drug has reached its expiration date or if the drug is adulterated or misbranded as determined under subsection 3.
3. Before being dispensed to an eligible individual, the legend drugs, devices, and supplies donated under the program must be inspected by a pharmacist to determine that the legend drugs, devices, and supplies are not adulterated or misbranded.

**43-15.2-05. Storage, distribution, and dispensing.**

1. A participant that accepts donated legend drugs, devices, or supplies under the program shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of the donated legend drugs, devices, or supplies.
2. A participant may charge an individual a handling fee that does not exceed two hundred fifty percent of the medicaid prescription dispensing fee for dispensing donated legend drugs, devices, or supplies under the program.
3. A dispenser of donated legend drugs, devices, or supplies may not submit a claim or otherwise seek reimbursement from any public or private third-party payer for the cost of donated legend drugs, devices, or supplies dispensed to any eligible individual under the program. A public or private third-party payer is not required to provide reimbursement to a dispenser for the cost of donated legend drugs, devices, or supplies dispensed to any eligible individual under the program.

**43-15.2-06. Liability.**

1. A donor of legend drugs, devices, or supplies, or any participant in the program, that exercises reasonable care in donating, accepting, distributing, prescribing, and dispensing legend drugs, devices, or

supplies under the program and the rules adopted to implement this chapter is immune from civil or criminal liability and from professional disciplinary action of any kind for any injury, death, or loss to personal property relating to such activities.

2. In the absence of intentional misconduct, a pharmaceutical manufacturer is immune from civil or criminal liability for any claim, injury, death, or loss to person or property arising from transfer, donation, dispensing, or acceptance of any legend drugs, devices, or supplies under this chapter, including liability for failure to transfer or communicate product or consumer information regarding the transferred legend drugs, devices, or supplies as well as the expiration date of the legend drugs, devices, or supplies under the program.

#### **43-15.2-07. Recordkeeping.**

1. A participant shall retain separate records detailing the receipt, distribution, and dispensing of legend drugs, devices, and supplies under this program.
2. The records of receipt must include:
  - a. The name and address of the donor;
  - b. The drug name and strength;
  - c. The manufacturer of the legend drugs, devices, or supplies;
  - d. The manufacturer lot number;
  - e. The drug expiration date;
  - f. The date received; and
  - g. The quantity received.
3. Records of distribution and dispensing must include:
  - a. The name and address of the participant;
  - b. The drug or device name;
  - c. The drug strength;
  - d. The quantity distributed;
  - e. The identity of the manufacturer of the legend drugs, devices, or supplies;
  - f. The manufacturer lot number;
  - g. The expiration date;
  - h. The date of distribution or dispensing; and

- i. The name and address of the individual to whom the donated item was distributed.
4. Records of dispensing must include:
  - a. The requirements for a prescription label; and
  - b. The manufacturer's lot number.

**SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$22,000, or so much of the sum as may be necessary, to the state department of health for the purpose of providing a grant of \$22,000 to the state board of pharmacy for establishing and administering a legend prescription drug and device donation and repository program, for the biennium beginning July 1, 2007, and ending June 30, 2009. The state department of health may not impose a fee for providing the grant nor impose any condition on the issuance of the grant other than that the state board of pharmacy is required to use the funds to establish and administer a legend prescription drug and device donation and repository program in accordance with section 1 of this Act.

Approved April 17, 2007  
Filed April 17, 2007

## CHAPTER 367

### HOUSE BILL NO. 1455

(Representatives Thoreson, Koppelman, Price)  
(Senators Dever, J. Lee, Warner)

## WHOLESALE DRUG PEDIGREES

AN ACT to create and enact chapter 43-15.3 of the North Dakota Century Code, relating to the pedigree for wholesale drugs; to amend and reenact section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

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

<sup>192</sup> **SECTION 1. AMENDMENT.** Section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

#### **12-60-24. Criminal history record checks.**

1. a. ~~The agencies and entities named in subsection 2 shall require each~~ Each applicant, employee, or petitioner for adoption ~~to who is subject to a criminal history record check under subsection 2 shall~~ consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.
- b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
- c. The agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section

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<sup>192</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1313, chapter 374, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.

may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
  - a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.
  - b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
  - c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
  - d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
  - e. The private investigative and security board for licenses or registrations under section 43-30-06.
  - f. The department of human services ~~department~~ for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.
  - g. The department of human services ~~department~~ for carecheck registrations under section 50-11.1-06.2.
  - h. The chief information officer of the information technology department for certain employees under section 54-59-20.
  - i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
  - j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement



board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.
- n. The state department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the state department of health who holds a license, certificate, or registration in a health-related field.
- o. The state board of pharmacy for a wholesale drug distributor seeking licensure under chapter 43-15.3.

**SECTION 2.** Chapter 43-15.3 of the North Dakota Century Code is created and enacted as follows:

**43-15.3-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 1. "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.
- 2. "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between the wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor as defined in section 1504 of the Internal Revenue Code [26 U.S.C. 1504], complies with the following:
  - a. The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing the ongoing relationship; and
  - b. The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.
- 3. "Board" means the state board of pharmacy.

4. "Chain pharmacy warehouse" means a physical location for prescription drugs which acts as a central warehouse and performs intracompany sales or transfers of the drugs to a group of chain pharmacies that have the same common ownership and control.
5. "Colicensed product" means a prescription drug in which two or more parties have the right to engage in the manufacturing or marketing or in the manufacturing and marketing of the drug.
6. "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor, under the terms of which the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of the prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor.
7. "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged, or offered for sale.
8. "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices.
9. "Manufacturer's exclusive distributor" means any person that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and which takes title to that manufacturer's prescription drug, but which does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. The manufacturer's exclusive distributor must be licensed as a wholesale distributor under this chapter, and to be considered part of the normal distribution channel also must be an authorized distributor of record.
10. "Normal distribution channel" means a chain of custody for a prescription drug which goes, directly or by drop shipment, from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third-party logistics provider, or from that manufacturer to that manufacturer's exclusive distributor to:
  - a. A pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
  - b. A wholesale distributor, to a pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient;
  - c. A wholesale distributor, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intracompany pharmacy, to a patient

- or other designated person authorized by law to dispense or administer the drug to a patient; or
- d. A chain pharmacy warehouse, to the chain pharmacy warehouse's intracompany pharmacy, to a patient or other designated person authorized by law to dispense or administer the drug to a patient.
11. "Pedigree" means a document or an electronic file containing information that records each distribution of any given prescription drug.
12. "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law, including federal regulation, to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the federal Food, Drug and Cosmetic Act [21 U.S.C. 3539(b)].
13. "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding actions completed by the pharmacists responsible for dispensing product to the patient.
14. "Repackager" means a person who repackages.
15. "Third-party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. The third-party logistics provider must be licensed as a wholesale distributor under this chapter and to be considered part of the normal distribution channel must also be an authorized distributor of record.
16. "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient. The term does not include:
- a. Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.
- b. The sale, purchase, distribution, trade, or transfer of a prescription drug or offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons.
- c. The distribution of prescription drug samples by manufacturers' representatives.
- d. Drug returns, when conducted by a hospital, health care entity, or charitable institution in accordance with title 21, Code of Federal Regulations, section 203.23.
- e. The sale of minimal quantities of prescription drugs by retail pharmacies to licensed practitioners for office use.

- f. The sale, purchase, or trade of a drug; an offer to sell, purchase, or trade a drug; or the dispensing of a drug pursuant to a prescription.
  - g. The sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets.
  - h. The sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel.
  - i. The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and the common carrier does not store, warehouse, or take legal ownership of the prescription drug.
  - j. The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor.
17. "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs, including, manufacturers; repackagers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses; manufacturer's exclusive distributors; authorized distributors of record; drug wholesalers or distributors; independent wholesale drug traders; specialty wholesale distributors; third-party logistics providers; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the normal distribution channel such wholesale distributor must also be an authorized distributor of record.

**43-15.3-02. Rulemaking authority.** The board shall adopt rules that conform with wholesale drug distributor licensing guidelines adopted by the federal food and drug administration, including rules necessary to carry out the purposes of this chapter, that incorporate and set detailed standards for meeting each of the license prerequisites set forth in this chapter, and that establish reasonable fees to carry out this chapter.

**43-15.3-03. Wholesale drug distributor licensing requirement - Minimum requirements for licensure.**

1. A wholesale distributor that engages in the wholesale distribution of prescription drugs must be licensed by the board under this chapter and must be properly licensed in any other state in which the wholesale distributor engages in the distribution of prescription drugs before engaging in wholesale distributions of wholesale prescription drugs in this state. However, information and qualification requirements for licensure beyond that required by federal law or regulation do not apply to manufacturers distributing their own United States food and drug

administration-approved drugs, unless particular requirements are deemed necessary and appropriate following rulemaking.

2. The board shall require the following minimum information from each wholesale distributor applying to get a license under subsection 1:
- a. The name, full business address, and telephone number of the licensee.
  - b. All trade or business names used by the licensee.
  - c. Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs.
  - d. The type of ownership or operation.
  - e. The name of every owner and operator of the licensee, including:
    - (1) If an individual, the name of the individual;
    - (2) If a partnership, the name of each partner, and the name of the partnership;
    - (3) If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and
    - (4) If a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
  - f. A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs.
  - g. The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to subdivision h for the individual.
  - h. Each individual required by subdivision g to provide a personal information statement and fingerprints shall provide the following information to the state:
    - (1) The individual's places of residence for the past seven years;
    - (2) The individual's date and place of birth;
    - (3) The individual's occupations, positions of employment, and offices held during the past seven years;
    - (4) The principal business and address of any business, corporation, or other organization in which each office of the individual was held or in which each occupation or position of employment was carried on;

- (5) Whether the individual has been, during the past seven years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;
  - (6) Whether, during the past seven years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control, or distribution of prescription drugs or criminal violations, together with details concerning any of those events;
  - (7) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven years, which manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were names as a party;
  - (8) A description of any misdemeanor or felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen days after the disposition of the appeal, submit to the state a copy of the final written order of disposition; and
  - (9) A photograph of the individual taken in the previous one hundred eighty days.
3. The information required under subsection 2 must be provided under oath.
  4. The board may not issue a wholesale distributor license to an applicant, unless the board:
    - a. Inspects or appoints a third party recognized by the board for the purpose of inspecting the wholesale distribution operations of the facility before initial licensure and continues to inspect periodically thereafter in accordance with a schedule to be determined by the board, but not less than every three years. Manufacturing facilities are exempt from inspection by the board if the manufacturing facilities are currently registered with the federal food and drug administration in accordance with section 510 of the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301]; and
    - b. Determines that the designated representative meets the following qualifications:
      - (1) Is at least twenty-one years of age;
      - (2) Has been employed full time for at least three years in a pharmacy or with a wholesale distributor in a capacity

- related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;
- (3) Is employed by the applicant full time in a managerial level position;
  - (4) Is actively involved in and aware of the actual daily operation of the wholesale distributor;
  - (5) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;
  - (6) Is serving in the capacity of a designated representative for only one applicant at a time, except where more than one licensed wholesale distributor is colocated in the same facility and the wholesale distributors are members of an affiliated group, as defined in section 15-04 of the Internal Revenue Code [26 U.S.C. 1504];
  - (7) Does not have any convictions under any federal, state, or local laws relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and
  - (8) Does not have any felony conviction under federal, state, or local laws.
5. The board shall submit the fingerprints provided by an individual with a license application for a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant.
  6. The board shall require every wholesale distributor applying for a license to submit a bond of at least one hundred thousand dollars, or other equivalent means of security acceptable to the state, including an irrevocable letter of credit or a deposit in a trust account or financial institution, payable to a fund established by the state under subsection 7. A chain pharmacy warehouse that is engaged only in intracompany transfers is not subject to the bond requirement. The purpose of the bond is to secure payment of any fines or penalties imposed by the state and any fees and costs incurred by the state regarding that license which are authorized under state law and which the licensee fails to pay thirty days after the fines, penalties, or costs become final. The state may make a claim against the bond or security until one year after the licensee's license ceases to be valid. A single bond may cover all facilities operated by the applicant in the state. Any chain pharmacy warehouse that is engaged only in intra-company transfers is exempt from the bond requirement.
  7. The board shall establish a fund in which to deposit the wholesale distributor bonds. Money in the fund is appropriated to the board on a continuing basis.

8. If a wholesale distributor distributes prescription drugs from more than one facility, the wholesale distributor shall obtain a license for each facility.
9. In accordance with each licensure renewal, the board shall send to each wholesale distributor licensed under this section a form setting forth the information that the wholesale distributor provided pursuant to subsection 2. Within thirty days of receiving the form, the wholesale distributor must identify and state under oath to the state licensing authority all changes or corrections to the information that was provided under subsection 2. Changes in, or corrections to, any information in subsection 2 must be submitted to the board as required by that authority. The board may suspend, revoke, or refuse to renew the license of a wholesale distributor if the board determines that the wholesale distributor no longer qualifies for the license issued under this section.
10. The designated representative identified pursuant to subdivision g of subsection 2 must receive and complete continuing training in applicable federal and state laws governing wholesale distribution of prescription drugs.
11. Information provided under subdivision h of subsection 2 may not be disclosed to any person other than a government agency that needs the information for licensing or monitoring purposes.

#### **43-15.3-04. Requirements to distribute prescription drugs.**

1. A person may not engage in wholesale distributions of prescription drugs without, after December 31, 2007, obtaining and maintaining accreditation or certification from the national association of boards of pharmacy's verified accredited wholesale distributor or an accreditation body approved by the board under subsection 4, obtaining and maintaining a license issued by the board, and paying any reasonable fee required by the board. By action of the board, the deadline may be extended through December 31, 2008.
2. The board may not issue or renew the license of a wholesale drug distributor that does not comply with this chapter. The board shall require a separate license for each facility or location where wholesale distribution operations are conducted. An agent or employee of any licensed wholesale drug distributor does not need a license and may lawfully possess pharmaceutical drugs when acting in the usual course of business or employment. The issuance of a license under this chapter does not affect tax liability imposed by the tax department on any wholesale drug distributor.
3. The board may adopt rules that permit out-of-state wholesale drug distributors to obtain a license on the basis of reciprocity if an out-of-state wholesale drug distributor possesses a valid license granted by another state and the legal standards for licensure in the other state are comparable to the standards under this chapter and the other state extends reciprocity to wholesale drug distributors licensed in this state. However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state



wholesale drug distributor must comply with the additional requirements of this chapter to obtain a license under this chapter.

4. The board may adopt rules to approve an accreditation body to evaluate a wholesale drug distributor's operations to determine compliance with professional standards, this chapter and any other applicable law, and perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesale drug distributor.

#### **43-15.3-05. Restrictions on transactions.**

1. A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse under the terms and conditions of the agreement between the wholesale distributor and the pharmacy or between the wholesale distributor and the chain pharmacy warehouse, including the returns of expired, damaged, and recalled pharmaceutical product to either the original manufacturer or a third-party returns processor, and the returns or exchanges are not subject to the pedigree requirement of section 43-15.3-06 if they are exempt from pedigree under the federal food and drug administration's currently applicable guidance for the federal Prescription Drug Marketing Act of 1987 [Pub. L. 100-293; 102 Stat. 95]. Wholesale distributors and pharmacies must ensure that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.
2. A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing authorities. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor shall affirmatively verify that the person is legally authorized to receive the prescription drugs by contacting the appropriate state licensing authorities.
3. Prescription drugs furnished by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. The manufacturer or wholesale distributor may furnish prescription drugs to an individual or agent of that individual at the premises of the manufacturer or wholesale distributor if:
  - a. The identity and authorization of the recipient are properly established; and
  - b. This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized individual.
4. Prescription drugs may be furnished to a hospital pharmacy receiving area if a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received must be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.
5. A manufacturer or wholesale distributor may not accept payment for or allow the use of a person's credit to establish an account for the

purchase of prescription drugs from any individual other than the owner of record, the chief executive officer, or the chief financial officer listed on the license of an individual legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

#### **43-15.3-06. Pedigree.**

1. Each person who is engaged in wholesale distribution of prescription drugs, including repackagers but excluding the original manufacturer of the finished form of the prescription drug which leave or have ever left the normal distribution channel, before each wholesale distribution of the drug, must provide a pedigree to the person who receives the drug.
  - a. A retail pharmacy or chain pharmacy warehouse must comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in wholesale distribution of prescription drugs.
  - b. The board shall determine by July 1, 2009, a targeted implementation date for electronic track and trace pedigree technology. The determination must be based on consultation with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drug products in this state. After consultation with interested stakeholders and before implementation of the electronic track and trace pedigree technology, the board must determine that the technology is universally available across the entire prescription pharmaceutical supply chain. The implementation date for the mandated electronic track and trace pedigree technology may not be before July 1, 2010, and may be extended by the board in one year increments if it appears the technology is not universally available across the entire prescription pharmaceutical supply chain.
2. Each person engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer of the finished form of the prescription drug, that is provided a pedigree for a prescription drug and attempts to further distribute that prescription drug shall verify affirmatively before any distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.
3. The pedigree must:
  - a. Include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, or the manufacturer's third-party logistics provider, colicensed product partner, or manufacturer's exclusive distributor, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At minimum, the necessary chain of distribution information must include:
    - (1) The name, address, telephone number, and if available, the e-mail address, of each owner of the prescription drug, and each wholesale distributor of the prescription drug;

- (2) The name and address of each location from which the product was shipped, if different from the owner's;
        - (3) The transaction dates; and
        - (4) A certification that each recipient has authenticated the pedigree.
      - b. At minimum, the pedigree must also include the:
        - (1) Name of the prescription drug;
        - (2) Dosage form and strength of the prescription drug;
        - (3) Size of the container;
        - (4) Number of containers;
        - (5) Lot number of the prescription drug;
        - (6) Name of the manufacturer of the finished dosage form; and
        - (7) National drug code (NDC) number.
    4. Each pedigree or electronic file must be:
      - a. Maintained by the purchaser and the wholesale distributor for three years from the date of sale or transfer; and
      - b. Available for inspection or use within five business days upon a request of an authorized officer of the law or the board.
    5. The board shall adopt rules and a form relating to the requirements of this section.

#### **43-15.3-07. Order to cease distribution.**

1. The board shall issue an order requiring the appropriate person, including the distributors or retailers of the drug, to immediately cease distribution of the drug within the state if the board finds that there is a reasonable probability that:
  - a. A wholesale distributor, other than a manufacturer, has violated a provision in this chapter or falsified a pedigree or sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use;
  - b. The prescription drug at issue as a result of a violation in subdivision a could cause serious, adverse health consequences or death; and
  - c. Other procedures would result in unreasonable delay.
2. An order under subsection 1 must provide the individual subject to the order with an opportunity for an informal hearing, to be held not later than ten days after the date of the issuance of the order, on the actions

required by the order. If, after providing an opportunity for such a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order.

#### **43-15.3-08. Prohibited acts - Penalty.**

1. Except as otherwise provided under section 43-15.3-09, it is a class B misdemeanor for a person to perform or cause the performance of or aid and abet any of the following acts in this state:
  - a. Failing to obtain a license under this chapter or operating without a valid license when a license is required by this chapter.
  - b. If the requirements of subsection 1 of section 43-15.3-05 are applicable and are not met, purchasing or otherwise receiving a prescription drug from a pharmacy.
  - c. If a state license is required under subsection 2 of section 43-15.3-05, selling, distributing, or transferring a prescription drug to a person that is not authorized under the law of the jurisdiction in which the person receives the prescription drug to receive the prescription drug.
  - d. Failing to deliver prescription drugs to specified premises, as required by subsection 3 of section 43-15.3-05.
  - e. Accepting payment or credit for the sale of prescription drugs in violation of subsection 5 of section 43-15.3-05.
  - f. Failing to maintain or provide pedigrees as required by this chapter.
  - g. Failing to obtain, pass, or authenticate a pedigree, as required by this chapter.
  - h. Providing the board or any of the board's representatives or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this chapter.
  - i. Obtaining or attempting to obtain a prescription drug by fraud, deceit, misrepresentation, or engaging in misrepresentation or fraud in the distribution of a prescription drug.
  - j. Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal food and drug administration, manufacturing, repacking, selling, transferring, delivering, holding, or offering for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution.
  - k. Except for the wholesale distribution by a manufacturer of a prescription drug that has been delivered into commerce under an application approved under federal law by the federal food and

- drug administration, adultering, misbranding, or counterfeiting any prescription drug.
- l. Receiving any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for pay or otherwise.
  - m. Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.
2. The prohibited acts in subsection 1 do not include a prescription drug manufacturer or agent of a prescription drug manufacturer obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

#### **43-15.3-09. Penalties.**

1. The board may impose the following sanctions if, after a hearing under chapter 28-32, the board finds that a person has violated section 43-15.3-08:
  - a. Revoke the wholesale drug distributor's license issued under this chapter if the person is a wholesale drug distributor; or
  - b. Assess a civil penalty against the person. A civil penalty assessed may not exceed ten thousand dollars per violation.
2. The board, upon a showing of a violation of this chapter, may revoke, suspend, or limit a license issued under this chapter after a proceeding under chapter 28-32. After a proceeding under chapter 28-32, the board may assess a civil penalty against a licensed wholesale drug distributor of not more than ten thousand dollars for each occurrence. If the licensed wholesale drug distributor fails to pay the civil penalty within the time specified by the board, the board may suspend the license without additional proceedings.
3. Upon application by the board, a court may grant an injunction, a restraining order, or other order to enjoin a person from offering to engage or engaging in the performance of any practices for which a permit or license is required by any applicable federal or state law including this chapter, upon a showing that the practices were or are likely to be performed or offered to be performed without a permit or license. An action brought under this subsection must be commenced either in the county where the conduct occurred or is likely to occur or in the county in the state where the defendant resides. An action brought under this subsection is in addition to any other penalty provided by law and may be brought concurrently with other actions to enforce this chapter.
4. A person that knowingly purchases or receives a prescription drug through any source other than a person licensed under this chapter, including a wholesale distributor, manufacturer, pharmacy distributor, or

- pharmacy commits a class A misdemeanor. A subsequent unrelated violation of this subsection is a class C felony.
5. A person who knowingly or intentionally engages in the wholesale distribution of a prescription drug without a license issued under this chapter commits a class C felony. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and with intent to defraud or deceive fails to obtain or deliver to another person a complete and accurate required pedigree concerning a prescription drug before obtaining the prescription drug from another person or transferring the prescription drug to another person or falsely swears or certifies that the person has authenticated any documents to the wholesale distribution of prescription drugs.
  6. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and knowingly or intentionally:
    - a. Destroys, alters, conceals, or fails to maintain a complete and accurate required pedigree concerning a prescription drug in the person's possession;
    - b. Purchases or receives prescription drugs from a person not authorized to distribute prescription drugs in wholesale distribution;
    - c. Sells, barter, brokers, or transfers a prescription drug to a person not authorized to purchase the prescription drug in the jurisdiction in which the person receives the prescription drug in a wholesale distribution;
    - d. Forges, counterfeits, or falsely creates a pedigree;
    - e. Falsely represents a factual matter contained in a pedigree; or
    - f. Fails to record material information required to be recorded in a pedigree.
  7. A person is guilty of a class C felony if that person engages in the wholesale distribution of a prescription drug and possesses a required pedigree concerning a prescription drug, knowingly or intentionally fails to authenticate the matters contained in the pedigree as required, and distributes or attempts to further distribute the prescription drug.

Approved March 29, 2007

Filed March 28, 2007

## CHAPTER 368

### HOUSE BILL NO. 1293

(Representatives Keiser, Porter)

## DENTAL PRACTICE EXEMPTIONS

AN ACT to create and enact a new section to chapter 43-17 and two new subsections to section 43-28-02 of the North Dakota Century Code, relating to the application of topical fluoride varnish and exemptions to the regulation of dentists; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 43-17 of the North Dakota Century Code is created and enacted as follows:

Topical fluoride varnish. A licensed physician or physician assistant may apply topical fluoride varnish to an individual in accordance with rules adopted by the board.

<sup>193</sup> **SECTION 2.** Two new subsections to section 43-28-02 of the North Dakota Century Code are created and enacted as follows:

To a registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant who is applying topical fluoride varnish to an individual and is acting under the direct or general supervision of a physician or licensed dentist if the registered nurse, licensed practical nurse, registered dental hygienist, or registered dental assistant has successfully completed a training program approved by the board.

To an advanced practice registered nurse licensed under chapter 43-12.1 who is applying topical fluoride varnish to an individual and is acting within the scope of practice of the advanced practice registered nurse and has successfully completed a training program approved by the board.

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

Approved April 9, 2007

Filed April 10, 2007

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<sup>193</sup> Section 43-28-02 was also amended by section 6 of House Bill No. 1313, chapter 374.

## CHAPTER 369

### SENATE BILL NO. 2060

(Government and Veterans Affairs Committee)  
(At the request of the State Board of Plumbing)

## PLUMBING BOARD AND CODE VIOLATIONS

AN ACT to amend and reenact sections 43-18-05 and 43-18-24 of the North Dakota Century Code, relating to plumbing board member compensation and plumbing code violations; to provide for a legislative council study; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 43-18-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-18-05. Members of board and employees - Compensation.** Each appointed member of the board ~~shall~~ is entitled to receive ~~twenty dollars per day for each day actually engaged~~ compensation in an amount determined by the board, not to exceed one hundred dollars per day, for actual services rendered in the performance of the member's duties under this chapter, and all members each member and employee of the board; and all employees thereof, shall is entitled to receive ~~their~~ their traveling expenses incurred in the performance of ~~their~~ their official duties. Allowances for traveling expenses must be as provided by law for state officials and employees. ~~All such~~ The compensation and expense must be paid out of the state plumbing board fund. The compensation provided for in this section may not be paid to any member of the board who receives salary or other compensation as a regular employee of the state or any of its political subdivisions or any institution or industry operated by the state.

<sup>194</sup> **SECTION 2. AMENDMENT.** Section 43-18-24 of the North Dakota Century Code is amended and reenacted as follows:

**43-18-24. Violation of chapter - Penalty.** Any person ~~who that~~ violates any of the provisions of this chapter or of the state plumbing code, or who fails to do any act required by said code, section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23 or works under the license of another person in a manner that is in violation of section 43-18-13 is guilty of an infraction a class B misdemeanor.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - CRIMINAL PENALTIES FOR VIOLATING OCCUPATIONAL LICENSURE LAWS AND RULES.** The legislative council shall consider studying, during the 2007-08 interim, the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire

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<sup>194</sup> Section 43-18-24 was also amended by section 7 of House Bill No. 1019, chapter 19.



titles of the North Dakota Administrative Agencies Practice Act regulating occupations and professions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

Approved May 1, 2007

Filed May 2, 2007

## CHAPTER 370

### HOUSE BILL NO. 1119

(Industry, Business and Labor Committee)  
(At the request of the State Real Estate Commission)

## REAL ESTATE COMMISSION EXECUTIVE DIRECTOR AND LICENSING

AN ACT to amend and reenact sections 43-23-03, 43-23-05.1, and 43-23-10, subdivision o of subsection 1 of section 43-23-11.1, section 43-23-16, and subsection 5 of section 43-23.2-02 of the North Dakota Century Code, relating to the state real estate commission.

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

**SECTION 1. AMENDMENT.** Section 43-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-03. Commission office - ~~Secretary-treasurer~~ Executive director.**

The commission shall employ a ~~secretary-treasurer~~ an executive director who shall furnish bond as required by the commission and who shall keep a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all moneys received for licenses which must, by the ~~secretary-treasurer~~ executive director, be deposited for safekeeping in depositories designated by the commission. The ~~secretary-treasurer~~ executive director must be custodian of all records of the commission and perform such other duties as the commission may require. The commission is authorized to fix the salary of the ~~secretary-treasurer~~ executive director, to employ such other employees as may be necessary to properly carry out the provisions of this chapter, to fix salaries and prescribe duties of such employees and to make such other expenditures as are necessary to carry out the provisions of this chapter. The commission shall meet annually and upon call by the ~~secretary-treasurer~~ executive director upon a written request of three or more members of the commission. The place of meeting of the said commission must be at the office of the ~~secretary-treasurer~~ executive director. The location of the office of the ~~secretary-treasurer~~ executive director must be at such places within the state as the commission may designate. The commission shall maintain all files, records, and property of the commission at the office of the ~~secretary-treasurer~~ executive director.

**SECTION 2. AMENDMENT.** Section 43-23-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-05.1. Salesperson license issued to an organization Organization of salesperson or broker associate permitted to be licensed - Fees.**

1. The commission may ~~grant~~ license an organization of a salesperson ~~license to an organization~~ or broker associate if:
  - a. The organization is owned solely by ~~one~~ an individual who is licensed as a salesperson or broker associate, or by that individual and that individual's spouse, or by that individual and other

- salespersons and broker associates within the same firm as that individual;
- b. The organization does not engage in any real estate ~~transaction~~ transactions as a third-party agent or in any other capacity requiring a license under this chapter; and
  - c. The organization does not advertise or otherwise portray to the public that the organization is a real estate broker or real estate brokerage firm.
2. The employing or associating broker of a salesperson ~~that is or broker associate who is part of~~ an organization is not relieved of any obligation to supervise the employed or associated salesperson or broker associate or of any other requirements under this chapter.
  3. An individual who forms a ~~salesperson an~~ organization is not by nature of that act relieved of any personal liability for licensed activities.
  4. The commission may adopt rules establishing a one-time license fee for an organization licensed as a salesperson or broker associate.

**SECTION 3. AMENDMENT.** Section 43-23-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-10. Nonresident brokers - Reciprocity - Consent to service.** A nonresident broker regularly engaged in the real estate business as a vocation and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker by another state as satisfactorily qualifying the nonresident broker for license as a broker; provided, that the nonresident broker has qualified for license in the broker's own state and also that the other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the ~~secretary-treasurer~~ executive director, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last-known main office of the applicant against whom said process or pleading is directed, and no default in any such proceedings or action may be taken except upon affidavit or certificate of the commission or the ~~secretary-treasurer~~ executive director, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default may be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

**SECTION 4. AMENDMENT.** Subdivision o of subsection 1 of section 43-23-11.1 of the North Dakota Century Code is amended and reenacted as follows:

- o. Failure by a broker to deliver to the seller party or parties represented by the broker a complete detailed closing statement in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; ~~also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed~~ party or parties represented by the broker, and to retain true copies of such statements in the broker's files.

**SECTION 5. AMENDMENT.** Section 43-23-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-16. Licensee list.** The ~~secretary-treasurer~~ executive director 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 recorder in each county, unless the board of county commissioners designates a different official, and must be held as a public record. Such lists must also be ~~mailed~~ provided by the ~~secretary-treasurer~~ executive director to any person in this state upon request, and to all licensed brokers without charge.

**SECTION 6. AMENDMENT.** Subsection 5 of section 43-23.2-02 of the North Dakota Century Code is amended and reenacted as follows:

5. The ~~secretary-treasurer~~ executive director of the commission shall furnish a bond in the amount of sixty thousand dollars, upon such conditions as the commission may prescribe.

Approved March 29, 2007

Filed March 28, 2007

**CHAPTER 371****SENATE BILL NO. 2168**

(Senators J. Lee, Tallackson)

(Representatives Carlson, Dietrich, Potter, Weiler)

**REAL ESTATE COMMISSION INSURANCE COVERAGE**

AN ACT to amend and reenact section 43-23-23 of the North Dakota Century Code, relating to errors and omissions coverage offered by the real estate commission.

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

**SECTION 1. AMENDMENT.** Section 43-23-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-23-23. Errors and omissions coverage not required if premium limit unobtainable.** If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred twenty five dollars, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

Approved April 9, 2007

Filed April 10, 2007

**CHAPTER 372****SENATE BILL NO. 2343**

(Senators Tallackson, Freborg)  
(Representatives DeKrey, Kretschmar)

**SUBDIVIDED LANDS DISPOSITION ACT  
REGISTRATION EXEMPTIONS**

AN ACT to create and enact a new subsection to section 43-23.1-05 of the North Dakota Century Code, relating to exemptions for registration provisions of the Subdivided Lands Disposition Act.

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

**SECTION 1.** A new subsection to section 43-23.1-05 of the North Dakota Century Code is created and enacted as follows:

Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to the sale or lease of any improved land on which there is a residential, commercial condominium, or industrial building or the sale or lease of land under a contract obligating the seller or lessor to erect such a building thereon within a period of two years.

Approved April 12, 2007  
Filed April 13, 2007

## CHAPTER 373

### SENATE BILL NO. 2125

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser Qualifications and Ethics Board)

### REAL ESTATE APPRAISER PRACTICE

AN ACT to amend and reenact section 43-23.3-01, subsection 1 of section 43-23.3-03, sections 43-23.3-04, 43-23.3-06, 43-23.3-07, 43-23.3-08, and 43-23.3-09, subsection 1 of section 43-23.3-11, sections 43-23.3-13, 43-23.3-14, 43-23.3-15, 43-23.3-16, 43-23.3-17, and 43-23.3-18, subsection 2 of section 43-23.3-22, and section 43-23.3-23 of the North Dakota Century Code, relating to real estate appraisers and the practice of real estate appraisal.

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

**SECTION 1. AMENDMENT.** Section 43-23.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Analysis" means a study of real estate other than estimating value.
2. "Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.
3. "Appraisal assignment" means an engagement for which a person is employed or retained to act, or would be perceived by the public as acting, as a disinterested party in rendering an unbiased supportable appraisal.
4. "Appraisal foundation" means the appraisal foundation incorporated as an Illinois corporation on November 30, 1987.
5. "Appraisal report" means a ~~written~~ any communication of an appraisal.
6. "Appraisal subcommittee" means the appraisal subcommittee of the federal financial institutions examination council.
7. "Appraiser" means a person who engages in appraisal activity for valuable consideration.
8. "Apprentice appraiser" means a person who ~~is in training to obtain a license~~ holds a valid permit as an apprentice appraiser.
9. "Board" means the North Dakota real estate appraiser qualifications and ethics board.

10. "Certified appraiser" means a person who ~~develops and communicates appraisals and who~~ holds a valid permit as a certified residential or general appraiser.
11. "Certified general appraiser" means a person who holds a valid permit as a certified general appraiser.
12. "Certified residential appraiser" means a person who holds a valid permit as a certified residential appraiser.
13. "Licensed appraiser" means a person who holds a valid permit as a licensed appraiser license.
- ~~42.~~ 14. "Permit" means the document issued by the board, verifying that the person named on the permit has fulfilled all prerequisites to practice either as an apprentice appraiser, a licensed appraiser, or a certified appraiser.
- ~~43.~~ 15. "Real estate" means an identified parcel or tract of land including improvements, and interests, benefits, and rights inherent in the ownership of real estate.
44. 16. "Uniform standards of professional appraisal practices" means standards of appraisal promulgated by the appraisal foundation as adopted and modified by the board. The standards adopted and modified by the board must meet the minimum standards adopted by the appraisal foundation.
- ~~45.~~ 17. "Valuation" means an estimate of the value of real estate or real property.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or its designated representative, shall:
  - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser, determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter, and establish application procedures.
  - b. Establish examination specifications for each category of licensed and certified appraiser and administer examinations.
  - c. Approve or disapprove applications for ~~licensure and certification permits~~, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals ~~licensed and certified~~ holding permits.
  - d. Discipline permittees.
  - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.



- f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.

**SECTION 3. AMENDMENT.** Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-04. Permit required - Exemptions.** Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

**SECTION 4. AMENDMENT.** Section 43-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-06. Classes of permits.** The board may issue apprentice, license, and certification permits for appraisers.

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist a licensed or a certified appraiser in the performance of an appraisal assignment.
2. A licensed appraiser must meet the minimum requirements established by the board for a permit ~~relating to licensed appraisers.~~
3. A certified residential appraiser must meet the ~~appraisal foundation~~ minimum requirements established by the board for a permit relating to the appraisal of all types of real property. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.
4. A certified general appraiser must meet the minimum requirements established by the board for a permit. The board's requirements may not exceed the appraisal foundation qualification criteria. The board shall review periodically the appraisal foundation appraisal qualification criteria to ensure the board's rules do not exceed the appraisal qualification criteria.

**SECTION 5. AMENDMENT.** Section 43-23.3-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-07. Examination requirement.** The board shall issue a permit to practice as a licensed, certified residential, or a certified general appraiser to an

individual who has demonstrated the following qualifications through a written examination process:

1. Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.
2. Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.
3. Understanding of the uniform standards of professional appraisal practices.
4. Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.
5. Basic understanding of real estate law.
6. Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser.

**SECTION 6. AMENDMENT.** Section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-08. Application prerequisites.**

- 4- An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser must ~~have a high school education or its equivalent and must~~ successfully complete the education requirements established by the board.
- 2- An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. ~~In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.~~
- 3- An applicant for a permit to practice as a certified appraiser must have a high school education or its equivalent. ~~In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal foundation and the board.~~

**SECTION 7. AMENDMENT.** Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-09. Appraisal experience.**

- 4- The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by ~~the appraisal foundation and~~ the board.
- 2- ~~The board may issue a permit to practice as a certified appraiser to an individual who possesses the minimum experience requirements~~

~~established by the appraisal foundation and the board.~~ The board may require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.

**SECTION 8. AMENDMENT.** Subsection 1 of section 43-23.3-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may issue a temporary permit to an applicant who is apprenticed, licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.

**SECTION 9. AMENDMENT.** Section 43-23.3-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-13. Principal place of business.** ~~An appraiser~~ A permittee shall notify the board of the address of the ~~appraiser's~~ permittee's place of business. Within twenty days of a change in the address of the place of business, the ~~appraiser~~ permittee shall give written notification of the change to the board and pay the change of address fee.

**SECTION 10. AMENDMENT.** Section 43-23.3-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-14. Permit number displayed with signature.** ~~An appraiser~~ A permittee shall place the ~~appraiser's~~ permittee's permit number adjacent to the ~~appraiser's~~ permittee's signature on an appraisal report, contract, or other writing used by the ~~appraiser~~ permittee in conducting appraisal activities.

**SECTION 11. AMENDMENT.** Section 43-23.3-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-15. Use of designation.** The terms "apprentice appraiser", "licensed appraiser", "certified residential appraiser", "certified general appraiser", and "certified appraiser" may only be used to refer to an individual who holds a permit under this chapter and may not be used following or immediately in connection with the name or signature of any other individual or person or in a manner that might be interpreted as referring to any other individual or person other than the individual who holds the permit. This section does not prohibit a licensed or certified appraiser from signing an appraisal report on behalf of a corporation, limited liability company, partnership, or firm.

**SECTION 12. AMENDMENT.** Section 43-23.3-16 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-16. Action for fee.** No claim for relief may be instituted in any court of this state for compensation for an act done or service rendered as ~~either a an~~ an apprentice, licensed, or a certified appraiser unless the appraiser held a permit to practice under this chapter at the time of offering to perform the act or service or procuring a promise to contract for the payment of compensation for a contemplated act or service as a an apprentice, licensed, or a certified appraiser.

**SECTION 13. AMENDMENT.** Section 43-23.3-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-17. Retention of records.** A An apprentice, licensed<sub>1</sub> or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the appraiser's permittee's services for appraisal work and all reports and supporting data assembled and formulated by the appraiser permittee in preparing the reports. The period for retention of records applies to each engagement of the services of the appraiser permittee and commences upon the date of the submission of the appraisal to the client unless, within that period, the appraiser permittee is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The appraiser permittee shall make available for inspection and copying by the board on reasonable notice all records required to be maintained.

**SECTION 14. AMENDMENT.** Section 43-23.3-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-18. Standards of professional appraisal practice.** A An apprentice, licensed ~~and~~, or certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation.

**SECTION 15. AMENDMENT.** Subsection 2 of section 43-23.3-22 of the North Dakota Century Code is amended and reenacted as follows:

2. In a disciplinary proceeding based upon a civil judgment, the appraiser permittee must be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment.

**SECTION 16. AMENDMENT.** Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-23.3-23. Penalties.** A person acting or purporting to act as a an apprentice, licensed<sub>1</sub> or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser, apprenticed, licensed<sub>1</sub> or certified in another state<sub>1</sub> who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a temporary permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved April 13, 2007  
Filed April 16, 2007

## CHAPTER 374

### HOUSE BILL NO. 1313

(Representatives Kasper, Dosch, Grande, Ruby)  
(Senators Cook, Wardner)

### DENTIST REGULATION

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and two new sections to chapter 43-28 of the North Dakota Century Code, relating to criminal background checks for dentists and powers of the board of dental examiners; and to amend and reenact sections 43-20-12.2 and 43-20-13, subsection 1 of section 43-20-13.1, and sections 43-28-01, 43-28-02, 43-28-04, 43-28-05, 43-28-10, 43-28-11, 43-28-15, 43-28-17, and 43-28-18 of the North Dakota Century Code, relating to the regulation of dentists and dental assistants.

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

<sup>195</sup> **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The board of dental examiners for investigations of applicants or dentists under section 9 of this Act, except that criminal history record checks need not be made unless required by the board.

**SECTION 2. AMENDMENT.** Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12.2. Notice to board of change of address.** A licensed dental hygienist shall notify the ~~secretary treasurer~~ executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist may not practice in this state for more than thirty days after the change of address without complying with this section.

**SECTION 3. AMENDMENT.** Section 43-20-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-13. Dental assistant - Scope of permitted practice.** A dental assistant is an auxiliary to the practice of dentistry. To the extent applicable and to the extent they are not inconsistent with this chapter, the requirements and rules adopted by the board of dental examiners under chapter 43-28 apply to the practice of dental assistants. A dentist may delegate to a dental assistant who is under that dentist's direct, indirect, or general supervision, procedures over which the dentist exercises full responsibility as provided by rules adopted by the board of dental

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<sup>195</sup> Section 12-60-24 was also amended by section 1 of House Bill No. 1455, chapter 367, section 2 of House Bill No. 1490, chapter 70, section 1 of Senate Bill No. 2037, chapter 491, section 3 of Senate Bill No. 2260, chapter 115, and section 4 of Senate Bill No. 2260, chapter 115.

examiners. A dental assistant may perform any delegated procedure over which the dentist exercises direct, indirect, or general supervision as permitted by rules adopted by the board of dental examiners.

**SECTION 4. AMENDMENT.** Subsection 1 of section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

1. At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a ~~licensee~~ registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the ~~license~~ registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:
  - a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
  - b. Proof of research, graduate study, teaching, or service as a clinician.
  - c. Proof of any other continuing education approved by the board.

**SECTION 5. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-01. Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.
2. ~~The "board"~~ "Board" means the state board of dental examiners.
3. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.
4. ~~"Legal entity" includes foreign and domestic corporations, foreign and domestic limited liability companies, partnerships, trade or firm names and public and private institutions~~ "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.

5. "License" means the right, authority, or permission granted by the state board of dental examiners to practice dentistry in this state.
6. For the purposes of this chapter, the term "practice of dentistry" includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

<sup>196</sup> **SECTION 6. AMENDMENT.** Section 43-28-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-02. Exceptions.** The provisions of this chapter do not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person ~~or legal entity~~, for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity may not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.
2. To ~~students~~ a student enrolled in and regularly attending any dental college ~~or~~ dental hygiene, or dental assisting program recognized as such by the board, if ~~their~~ the student's acts are done in ~~the~~ the dental college or the dental hygiene, or dental assisting program and under the direct supervision of ~~their~~ the student's instructor; or to ~~students~~ a student who ~~are~~ is in training in ~~any~~ any dental programs program recognized as such by the board and who ~~are~~ is continuing ~~their~~ the student's training and performing the duties of an extern under the supervision of a ~~licensed and registered~~ dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.
3. To ~~a~~ a legally qualified and licensed ~~physicians~~ physician, ~~surgeons~~ surgeon, and ~~or~~ or other ~~practitioners~~ practitioner authorized by law, who ~~perform~~ performs in emergency cases ~~performs~~ any act ~~defined herein as~~ defined herein as ~~within the scope of~~ within the scope of the practice of dentistry ~~in emergency cases~~.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician ~~or~~ lecturer, or attendant of an educational program under the auspices of a dental college, a reputable dental society, dental hygienist society, or dental assistant society.
5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, air

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<sup>196</sup> Section 43-28-02 was also amended by section 2 of House Bill No. 1293, chapter 368.

force, public health service, coast guard, veterans bureau, or director of the dental division of the state department of health.

**SECTION 7. AMENDMENT.** Section 43-28-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-04. Qualifications and appointment of members of the board - Limited vote.**

1. A ~~person~~ An individual may not be appointed as a dentist member of the board unless that ~~person~~ individual:
  - a. Is a ~~licensed and registered dentist in accordance with~~ licensed and registered under this chapter 43-28; and
  - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. A ~~person~~ An individual may not be appointed as the dental hygienist member of the board unless that ~~person~~ individual:
  - a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
  - b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. A ~~person~~ An individual may not be appointed as the consumer member of the board unless that ~~person~~ individual:
  - a. Has been a resident of North Dakota for five years immediately preceding appointment;;
  - b. Has no personal or family financial relationship with the dental profession; and
  - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a ~~person~~ an individual engaged in any of those occupations.
4. The dental hygienist and consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

**SECTION 8. AMENDMENT.** Section 43-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum.** The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, a member who has at least two years remaining on that member's term, president



elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation ~~the sum of one hundred ten dollars~~ for each day actually engaged in the duties of the office per diem at a rate established by the board and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

**SECTION 9.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Fitness - Criminal history record check - Costs.** The board may investigate an applicant's or a dentist's fitness, qualification, and previous professional record and performance. The board may seek information sought under this section from recognized data sources, including the national practitioners data bank, data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies. An applicant or a dentist for whom the board is performing an investigation under this section shall cooperate with the board if necessary to access the information sought by the board. The board or the board's investigative disciplinary panels may require an applicant or a dentist who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with a criminal history record check performed under this section are the responsibility of the dentist or applicant.

**SECTION 10. AMENDMENT.** Section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-10. License and certificate required - Scope of practice.** ~~No~~ A person may not practice dentistry in this state unless:

- 1- ~~The person first obtains a license to practice in this state; and~~
- 2- The person holds a valid biennial certificate of registration that person is a dentist. A dentist shall practice within the scope of that dentist's education, advanced training as recognized by the board and any specialty practice recognized by the American dental association or other professional entity recognized by the board.

**SECTION 11. AMENDMENT.** Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-11. Examination required - Application - Qualifications - Fees.** ~~Any person who desires to obtain a license~~ An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed by the board and shall submit to an examination by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board. Additional costs of regional or other state's examinations as set out in section 43-28-12.1 and

chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a ~~person~~ of good moral character.

**SECTION 12. AMENDMENT.** Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-15. Licensure by credential review.** The board may issue a license and certificate of registration to practice dentistry in this state to any ~~person~~ individual who wishes to practice dentistry in North Dakota upon a practical examination, if the ~~person~~ individual:

1. Has been licensed and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state where the requirements are at least equivalent to those of this state.
2. Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character.
3. Pays to the board the fee determined by the board.
4. Delivers to the board a certificate from the examining or licensing board of every state in which the ~~person~~ individual is practicing or is licensed to practice, certifying that the ~~person~~ individual is a licensed and registered dentist in that state, and is of good moral character.
5. Demonstrates the ~~person's~~ individual's ability to the satisfaction of the board.

The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.

**SECTION 13. AMENDMENT.** Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-17. Failure to pay annual biennial fee - Cancellation of license - Inactive status.** If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

**SECTION 14.** A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

**Duty to report.**

1. A dentist shall report to the board in writing within ninety days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:
  - a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.
  - b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.
  - c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.
2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

**SECTION 15. AMENDMENT.** Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-18. Grounds for revocation or suspension of license and certificate.** The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.

9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to demonstrate minimum professional competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence. When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
15. Willfully engaged in fraudulent submission of insurance claims.
16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.
20. Abandoned the dentist's practice as defined by rules adopted by the board.
21. ~~Violated this chapter~~ Failed to report to the board as required under section 14 of this Act.

## CHAPTER 375

### SENATE BILL NO. 2152

(Senators Nething, J. Lee, Warner)  
(Representatives Pietsch, Price)

## DENTAL LOAN REPAYMENT PROGRAM AND GRANTS

AN ACT to create and enact a new subsection to section 43-28.1-03 and a new section to chapter 43-28.1 of the North Dakota Century Code, relating to selection and eligibility for loan repayment under the dentists' loan repayment program and for new practice grants; to provide for a legislative council study; and to provide an appropriation.

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

**SECTION 1.** A new subsection to section 43-28.1-03 of the North Dakota Century Code is created and enacted as follows:

For the purposes of a dentist selected for loan payment who practices within fifteen miles [24.14 kilometers] of the city limits of Bismarck, Fargo, or Grand Forks, to qualify to receive a yearly disbursement under this chapter during that year of obligated service, the dentist must have:

- a. Received dental medical payments of at least twenty thousand dollars in the form of medical assistance reimbursement; or
- b. Practiced at least two full workdays per week at a public health clinic or at a nonprofit dental clinic that uses a sliding fee schedule to bill the nonprofit dental clinic's patients.

**SECTION 2.** A new section to chapter 43-28.1 of the North Dakota Century Code is created and enacted as follows:

#### **New practices - Grants.**

1. A dentist who graduated from an accredited dental school within the previous five years and is licensed to practice in North Dakota may submit an application to the state health council for a grant for the purpose of establishing a dental practice in a city in the state which has a population that does not exceed seven thousand five hundred.
2. The state health council may award a maximum of two grants per year and shall establish the criteria for the grant program under subsection 1 which must include:
  - a. A maximum grant award of fifty thousand dollars per applicant;
  - b. A requirement that the community must provide a fifty percent match for a grant;

- c. A requirement that a dentist who receives a grant under this section must use the funds for buildings, equipment, and operating expenses;
- d. A provision that the grant must be distributed in equal amounts over a five-year period; and
- e. A requirement that a dentist selected for a grant under this section must commit to practice in the community for a minimum of five years.

**SECTION 3. LEGISLATIVE COUNCIL STUDY - COMMUNITY HEALTH TRUST FUND.** The legislative council shall consider studying, during the 2007-08 interim, the historic and anticipated uses of funds from the community health trust fund, including a cost-benefit evaluation of past expenditures from the fund, the feasibility and desirability of establishing a strategic plan for future use of the fund, and the sustainability of the fund. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

**SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$60,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the new practice grant program, for the biennium beginning July 1, 2007, and ending June 30, 2009.

Approved May 2, 2007

Filed May 3, 2007

**CHAPTER 376****SENATE BILL NO. 2056**

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

**VETERINARIAN LICENSURE PURPOSE STATEMENT  
REPEAL**

AN ACT to repeal section 43-29-01 of the North Dakota Century Code, relating to the statement of purpose for the licensure of veterinarians.

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

**SECTION 1. REPEAL.** Section 43-29-01 of the North Dakota Century Code is repealed.

Approved April 12, 2007

Filed April 13, 2007

## CHAPTER 377

### HOUSE BILL NO. 1052

(Agriculture Committee)

(At the request of the State Board of Veterinary Medical Examiners)

### VETERINARIAN LICENSURE

AN ACT to amend and reenact subsections 1, 2, 5, and 9 of section 43-29-01.1, subsection 1 of section 43-29-07, subsections 1, 2, and 3 of section 43-29-07.2, subsection 11 of section 43-29-13, and subsection 1 of section 43-29-14 of the North Dakota Century Code, relating to the licensure of veterinarians.

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

**SECTION 1. AMENDMENT.** Subsections 1, 2, 5, and 9 of section 43-29-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. "Accredited ~~or approved~~ college of veterinary medicine" means any veterinary college or division of a university or college which offers the degree of doctor of veterinary medicine or its equivalent and which conforms to the standards required for accreditation ~~or approval~~ by the council on education of the American veterinary medical association.
2. "Accredited program in veterinary technology" means any postsecondary educational program of two or more academic years that ~~has fulfilled the essential criteria established is accredited~~ by the committee on veterinary technician education and activities ~~and approved by~~ of the American veterinary medical association ~~house of delegates~~.
5. "Certificate" means a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited ~~or approved~~ college of veterinary medicine.
9. "Veterinarian-client-patient relationship" means:
  - a. ~~The A~~ A veterinarian has assumed the responsibility for making medical judgments regarding the health of an animal and the need for medical treatment, and the client, who is the owner or other caretaker, has agreed to follow the ~~instruction~~ instructions of the veterinarian.
  - b. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. ~~This means the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal, or by medically~~



~~appropriate and timely visits to the premises where the animal is kept.~~

- c. The practicing veterinarian is readily available for followup in the case of adverse reactions or failure of the regimen of therapy. This relationship exists only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal and by medically appropriate and timely visits to the premises where the animal is kept.

**SECTION 2. AMENDMENT.** Subsection 1 of section 43-29-07 of the North Dakota Century Code is amended and reenacted as follows:

1. 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 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 1, 2, and 3 of section 43-29-07.2 of the North Dakota Century Code are amended and reenacted as follows:

1. The board shall hold at least two examinations a year ~~and may hold additional examinations as necessary.~~ ~~A person desiring to take an examination shall apply at least thirty days before the date of the examination.~~ The board shall adopt rules governing preparation, administration, and grading of examinations. Examinations must be designed to test the examinee's knowledge of and proficiency in the subjects and techniques commonly taught in veterinary schools. To pass the examination, the examinee must demonstrate scientific and practical knowledge sufficient to prove competency to practice veterinary medicine in the judgment of the board. An examinee must be tested by written examination, supplemented by any oral interview and practical demonstration the board determines necessary. The board may adopt and use the examination prepared by the national board examination committee of veterinary medical examiners. After each examination, the board shall notify each examinee of the result of the examination, and the board shall issue a license to each person who passed the examination. The board shall record each new license and issue a certificate of registration to each new licensee. Any person failing an examination ~~must~~ may be admitted to any subsequent examination on approval by the board and payment of the application fee.

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 ~~examination committee~~ of veterinary medical examiners; 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.
3. The board may issue without examination a temporary permit to practice veterinary medicine in this state to:
  - a. A qualified applicant for license pending examination, if the temporary permit expires the day after the notice of results of the first examination given after the permit is issued. A temporary permit may not be issued to an applicant who previously has failed the examination in this or any other state or a foreign country.
  - b. A nonresident veterinarian validly licensed in another state or a foreign country who pays the fee established and published by the board if the temporary permit is issued for a period of no more than sixty days and no more than one permit is issued to a person during each calendar year.
  - c. A senior veterinary student who practices in the office of and under the direct supervision of a licensed veterinarian. A temporary student permit may not exceed six months from its date of issuance and is granted without payment of a fee.
  - d. A graduate of a nonaccredited ~~or unapproved~~ college of veterinary medicine, who has satisfactorily completed the fourth year of clinical study at an accredited or approved college of veterinary medicine, has successfully passed the examination provided by the national board of veterinary medical examiners, and is enrolled in the educational commission for foreign veterinary graduates program. The holder of a temporary permit issued under this subdivision must practice under the supervision of a licensed veterinarian. A temporary permit issued under this subdivision is valid until the holder obtains a certificate or for two years.

**SECTION 4. AMENDMENT.** Subsection 11 of section 43-29-13 of the North Dakota Century Code is amended and reenacted as follows:

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.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-29-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The state board of veterinary medical examiners may refuse to issue a license or certificate of registration, or may suspend or revoke a license and certificate of registration, upon any of the following grounds:
  - a. Fraud or deception in procuring the license, including conduct that violates the security or integrity of any licensing examination.
  - b. The use of advertising or solicitation that is false, misleading, or otherwise determined unprofessional under rules adopted by the board.
  - c. Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs.
  - d. Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine.
  - e. Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.
  - f. Employment of unlicensed persons to perform work that under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.
  - g. Fraud or dishonest conduct in applying or reporting diagnostic biological tests, inspecting foodstuffs, or in issuing health certificates.
  - h. Failure of the licensee to keep the premises and equipment used in the licensee's practice in a reasonably clean and sanitary condition and failure to use reasonably sanitary methods in the practice of veterinary medicine.
  - i. Violation of the rules adopted by the board.
  - j. Conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a veterinarian, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - k. Willful or repeated violations of this chapter or any rule adopted by the board.
  - l. Failure to report, as required by law, or making false report of, any contagious or infectious disease.
  - m. Cruelty to animals.

- n. Revocation of a license to practice veterinary medicine by another state on grounds other than nonpayment of a registration fee.
- o. The use, prescription, or sale of any veterinary prescription drug, or the prescription or an extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship.

Approved March 6, 2007

Filed March 7, 2007

## CHAPTER 378

### HOUSE BILL NO. 1125

(Education Committee)

(At the request of the State Board of Higher Education)

## VETERINARIAN LOAN REPAYMENT PROGRAM

AN ACT to create and enact chapter 43-29.1 of the North Dakota Century Code, relating to a loan repayment program for veterinarians; and to provide a continuing appropriation.

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

**SECTION 1.** Chapter 43-29.1 of the North Dakota Century Code is created and enacted as follows:

**43-29.1-01. Loan repayment program - Veterinarians - Maximum amount of funds.** Each year the state health council, in consultation with the state board of animal health, shall select from a pool of applicants no more than three veterinarians who shall provide food animal veterinary medicine services to communities in this state. The veterinarians are eligible to receive up to eighty thousand dollars in loan repayment funds. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional veterinarians for participation in the loan repayment program under this chapter.

**43-29.1-02. Loan repayment program - Veterinarians - Powers of state health council.** The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.
2. Identify communities that are in need of a veterinarian and establish a priority ranking for participation in the program by the selected communities.
3. Create and distribute a loan repayment application.
4. Determine the amount of the loan repayment funds for which a veterinarian is eligible under this chapter and, in making this determination, examine any outstanding education loans incurred by the applicant.
5. Establish conditions regarding the use of the loan repayment funds.
6. Enter a nonrenewable contract with the veterinarian and the selected community to provide to the veterinarian funds for the repayment of education loans in exchange for the veterinarian agreeing to actively practice in the selected community.
7. Receive and use funds appropriated for the program.
8. Enforce any contract under the program.

9. Cancel a contract for reasonable cause.
10. Participate in federal programs that support the repayment of education loans incurred by veterinarians and agree to the conditions of the federal programs.
11. Accept property from an entity.
12. Cooperate with the state department of health to effectuate this chapter.

**43-29.1-03. Veterinarian selection criteria - Eligibility for loan repayment.**

1. In establishing the criteria regarding a veterinarian's eligibility for loan repayment funds under this chapter, the state health council shall:
  - a. Consider the veterinarian's training in food animal veterinary medicine, ability and willingness of the veterinarian to engage in food animal veterinary medicine, and the extent to which such services are needed in a selected community.
  - b. Consider the veterinarian's commitment to serve in a community that is in need of a veterinarian.
  - c. Consider the compatibility of the veterinarian with a selected community.
  - d. Consider the date by which the veterinarian would be available for service to the selected community.
  - e. Consider the veterinarian's competence and professional conduct.
  - f. Give priority to a veterinarian on whose behalf state-funded student support fees have not been paid.
2. A veterinarian who is selected to receive loan repayment funds under this chapter:
  - a. Must have graduated from an accredited college of veterinary medicine; and
  - b. Must be licensed to practice veterinary medicine in this state.
3. Veterinarians selected shall contract to provide full-time veterinary medicine services for two, three, or four years in one or more selected communities.

**43-29.1-04. Community selection criteria.**

1. In selecting a community with a defined need for the services of a veterinarian, the health council shall consider:
  - a. The size of the community and give priority:
    - (1) First to rural communities having a population under five thousand;



receive a loan payment in an amount up to twenty-five thousand dollars. All payments under this section must be made to the issuer of the student loan. No individual may receive more than eighty thousand dollars under this section. If an individual fails to complete an entire year of service, the amount repayable under this section for that year must be prorated.

**43-29.1-08. Gifts, grants, and donations - Continuing appropriation.** The state health council may accept any conditional or unconditional gifts, grants, or donations for the purpose of providing funds for the repayment of veterinarians' education loans. If an entity desires to provide funds to the state health council to allow an expansion of the program beyond the three veterinarians contemplated by this chapter, the entity shall commit to fund fully the expansion for a period of four years. The state health council may contract with a public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of this chapter. During the 2007-09 biennium, the state health department may receive no more than seven percent of the appropriated moneys and the state veterinarian may receive no more than three percent of the appropriated moneys for administration of the loan repayment program. All moneys received as gifts, grants, or donations under this section are appropriated as a continuing appropriation to the state health council for the purpose of providing funds for the repayment of additional veterinarians' education loans.

Approved April 13, 2007  
Filed April 16, 2007



**CHAPTER 379****SENATE BILL NO. 2052**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PRIVATE INVESTIGATIVE LICENSING EXCEPTION**

AN ACT to amend and reenact subsection 8 of section 43-30-02 of the North Dakota Century Code, relating to an exception from private investigative licensing for fire origin and cause investigations.

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

**SECTION 1. AMENDMENT.** Subsection 8 of section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

8. An expert who specializes in a specific, limited area of practice, including automotive accident reconstructions, fire ~~cause and origin inspections and cause investigations~~, technical surveillance countermeasures, handwriting analysis, auditor, accountant or accounting clerk performing audits or accounting functions, or other areas of practice covered by other licensure in the state, and other areas determined by the board, that fall within the individual's scope of employment, incidental to the investigative profession.

Approved March 13, 2007

Filed March 14, 2007

**CHAPTER 380****SENATE BILL NO. 2062**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PROPRIETARY SECURITY OFFICERS**

AN ACT to create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to proprietary security officers.

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

**SECTION 1.** A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

**Proprietary security.** A proprietary employer is a person who employs an individual to provide security for that person's own property or protection. A proprietary employer is not required to be licensed as a private security service if the employer does not offer or provide security services to others. Proprietary security employees may be voluntarily registered as security officers under section 43-30-06. In order to be registered as a proprietary security officer, an employee must meet all of the requirements to be registered as a security officer except for:

1. Employment by a licensed private security service; and
2. Supervision by an individual who is licensed to provide security services.

Approved April 10, 2007

Filed April 11, 2007

**CHAPTER 381****SENATE BILL NO. 2055**

(Judiciary Committee)

(At the request of the Private Investigative and Security Board)

**PRIVATE INVESTIGATIVE AND SECURITY BOARD  
PERSONNEL**

AN ACT to amend and reenact section 43-30-04 of the North Dakota Century Code, relating to office personnel hired by the private investigative and security board.

**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, including armed security personnel. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

Approved April 5, 2007

Filed April 5, 2007

## CHAPTER 382

### HOUSE BILL NO. 1131

(Natural Resources Committee)

(At the request of the State Department of Health)

## WATER WELL CONTRACTOR AND GEOTHERMAL DRILLER CERTIFICATION

AN ACT to create and enact sections 43-35-15.3, 43-35-18.3, and 43-35-19.3 of the North Dakota Century Code, relating to the state board of water well contractors and geothermal driller certification and standards; and to amend and reenact sections 43-35-03, 43-35-06, 43-35-11, 43-35-12, 43-35-13, 43-35-14, 43-35-21, and 43-35-22 of the North Dakota Century Code, relating to the state board of water well contractors and geothermal system drillers and drilling.

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

**SECTION 1. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-03. State board of water well contractors - Members' appointment - Qualification.** The state board of water well contractors consists of the state engineer and the state health officer, or their duly authorized designees, ~~and~~ two water well contractors appointed by the governor, ~~and~~ one geothermal system driller appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

**SECTION 2. AMENDMENT.** Section 43-35-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-06. Secretary-treasurer bond.** Promptly upon assuming the office, the secretary-treasurer shall furnish a bond satisfactory to the board for the faithful performance and discharge of the secretary-treasurer's duties in ~~such an amount as may be prescribed~~ determined by the board, the premium ~~therefor~~ for which is to be paid from board funds.

**SECTION 3. AMENDMENT.** Section 43-35-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-11. Certificate required.** ~~No~~ A person, partnership, firm, corporation, or limited liability company ~~shall~~ may not engage in the business of water well contracting or water well pump and pitless unit installation, monitoring well contracting, or geothermal system drilling unless certified to do so by the board of water well contractors.

**SECTION 4. AMENDMENT.** Section 43-35-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-12. Examination - When held - Notice.** The board shall hold meetings at such times and such places as it shall designate for the purpose of administering an examination to those persons desiring to become certified as water

well contractors, water well pump and pitless unit installers, ~~or~~ monitoring well contractors, or geothermal system drillers. The board shall give no less than ten days' written notice to each applicant of the time and place of such examination. The board shall develop separate examinations for the certification of water well contractors, water well pump and pitless unit installers, ~~and~~ monitoring well contractors, and geothermal system drillers.

**SECTION 5. AMENDMENT.** Section 43-35-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-13. Certificate - How obtained - Fee - Bond.**

1. Any person ~~desiring to take who takes~~ the examination to become a certified water well contractor ~~shall must first have completed complete~~ a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a career and technical education program of at least one year in water well construction and shall make application to the board.
2. Any person ~~desiring to take who takes~~ the examination to become a certified water well pump and pitless unit installer ~~shall must first have completed complete~~ a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a career and technical education program of at least one year in water well pump and pitless unit installation.
3. Any person ~~desiring to take who takes~~ the examination to become a certified monitoring well contractor ~~shall must first have completed complete~~ a minimum of one-year apprenticeship or experience in monitoring well construction under the direct supervision of a certified water well contractor or a certified monitoring well contractor or have completed a career and technical education program of at least one year in water well construction or hold a bachelor's degree in engineering or geology from an approved school and shall make application to the board.
4. Any person who takes the examination to become a certified geothermal system driller must first complete either a minimum of one year of apprenticeship under the direct supervision of a certified geothermal system driller or have a minimum of two thousand forty installation hours of experience in geothermal system drilling working under the direct supervision of a certified geothermal system driller, or, in the alternative, must first complete career and technical education relating to geothermal system drilling lasting at least one school year.
5. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ten dollars. If upon examination the applicant is found to be qualified as a water well contractor ~~or~~, a water well pump and pitless unit installer, a monitoring well contractor, or a geothermal system driller, the board shall issue to that person an appropriate certificate upon the applicant's executing and filing with the board a bond as required in this chapter. The board may offer a combined examination for certification of a person as a water well contractor and a water well pump and pitless unit

installer and may issue a single certificate for successful completion of the combined examination. Certificates issued under this chapter are not transferable.

**SECTION 6. AMENDMENT.** Section 43-35-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-14. Bond required.** Before receiving a certificate under this chapter, a qualified applicant shall execute and deposit with the board a surety bond in the amount of two thousand dollars conditioned for the faithful performance of all water well, monitoring well, ~~or~~ pump and pitless unit, or geothermal system installation contracts undertaken by the applicant and the strict compliance with this chapter.

**SECTION 7.** Section 43-35-15.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-15.3. Certification of persons engaged in drilling of geothermal systems before certification requirement.** Upon application and sworn affidavit and the payment of a registration fee of not more than fifty dollars, as set by the board, the board shall issue an appropriate certificate, without examination, to any person who has been engaged in the business of geothermal system drilling as an occupation for at least one year before July 1, 2007, if the application is made before July 1, 2008.

**SECTION 8.** Section 43-35-18.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-18.3. Firm engaged in drilling of geothermal systems to employ certified driller - Exception.** A person may not engage in the business of drilling geothermal systems in the state after July 1, 2008, unless a certified driller, who is responsible for the proper drilling of the geothermal system, is in charge of the drilling. This chapter does not prohibit a person from drilling geothermal systems on that person's own premises for that person's own use.

**SECTION 9.** Section 43-35-19.3 of the North Dakota Century Code is created and enacted as follows:

**43-35-19.3. Standards for drilling of geothermal systems.** All drilling of geothermal systems must comply with the rules adopted by the state geologist and the board.

**SECTION 10. AMENDMENT.** Section 43-35-21 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-21. Certification to nonresidents - Reciprocity.** To the extent other states providing for the certification of water well contractors, monitoring well contractors, ~~or~~ water well pump and pitless unit installers, or geothermal system drillers provide for similar action, the board may grant certification to water well contractors, monitoring well contractors, ~~and~~ water well pump and pitless unit installers, and geothermal system drillers certified by other states, upon payment by the applicant of the required fee and the furnishing of a bond as provided by section 43-35-14, after being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of such certificates in this state.

**SECTION 11. AMENDMENT.** Section 43-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-22. Contracting without certification - Penalty.** Any person contracting to drill a water well or monitoring well or install, drill a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter, or otherwise violating this chapter, is guilty of an infraction.

Approved March 2, 2007

Filed March 2, 2007

## CHAPTER 383

### HOUSE BILL NO. 1053

(Human Services Committee)

(At the request of the Board of Addiction Counseling Examiners)

### ADDICTION COUNSELOR LICENSURE

AN ACT to amend and reenact subsections 3, 4, and 5 of section 43-45-01, sections 43-45-02, 43-45-03, and 43-45-04, subsection 1 of section 43-45-05, sections 43-45-05.1, 43-45-05.3, 43-45-06, and 43-45-07, and subsection 1 of section 43-45-07.3 of the North Dakota Century Code, relating to the licensure of addiction counselors; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Subsections 3, 4, and 5 of section 43-45-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Practicum~~ Clinical training" means a ~~minimum of nine months clinical training including inpatient or outpatient treatment work in addiction counseling, approved by the board.~~
4. "~~Private practice of addiction counseling~~ Internship" means the ~~independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling work experience in a licensed addiction treatment facility under the supervision of a clinical supervisor registered by the board.~~
5. "~~Work experience or internship~~ Private practice of addiction counseling" means a ~~professional addiction treatment experience under the supervision of a clinical supervisor in a licensed addiction treatment facility or under the authority of a licensed addiction facility the independent practice of addiction counseling by a qualified individual who is self-employed on a full-time or part-time basis and is responsible for that independent practice. Consultation services provided to an organization or agency are not the private practice of addiction counseling.~~

**SECTION 2. AMENDMENT.** Section 43-45-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-02. Board of addiction counseling examiners - Composition.** The governor shall appoint a ~~nine-member~~ seven-member board of addiction counseling examiners. The members shall include:

1. ~~Six~~ Five members who are licensed addiction counselors actively engaged in the practice of addiction counseling, one of whom must be actively engaged in the private practice of addiction counseling.
2. Two members who are laypersons.



3. ~~One member who is a licensed addiction counselor in private practice.~~

**SECTION 3. AMENDMENT.** Section 43-45-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-03. Board member terms.** ~~The governor, prior to September 4, 1993, shall appoint one new board member for a term of one year, and one new board member for a term of two years members.~~ Appointments made thereafter must be for three-year terms, but no person may be appointed to serve for more than two consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, ~~except for the newly appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.~~

**SECTION 4. AMENDMENT.** Section 43-45-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-04. Board power, duties, and authority.** ~~The board shall administer and enforce the provisions of this chapter, evaluate the qualifications of applicants, and issue licenses under this chapter. The board shall also approve addiction counselor training programs and internship sites. The board may:~~

1. ~~Adopt rules under chapter 28-32, relating to licensure of addiction counselors, the establishment of ethical standards of practice for persons holding a license to practice addiction counseling in this state, the establishment of continuing education requirements, the requirements for approved addiction counselor training programs, internship sites, the requirements for clinical supervisors, the requirements for individuals in the private practice of addiction counseling, and requirements for trainee or internship approval. The board shall:~~
  - a. Administer and enforce the provisions of this chapter.
  - b. Evaluate the qualifications of applicants for a license to practice addiction counseling and issue licenses under this chapter.
  - c. Establish ethical standards of practice for persons holding a license to practice addiction counseling in this state.
  - d. Establish continuing education requirements and approve providers of continuing education.
  - e. Approve clinical training programs.
  - f. Register clinical trainees.
  - g. Register interns.
  - h. Register clinical supervisors.
  - i. Register licensees for private practice.
  - j. Approve and administer examinations.

2. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter. The board may:
  - a. Adopt rules under chapter 28-32 to implement this chapter.
  - b. Issue subpoenas, examine witnesses, and administer oaths, and may investigate allegations of practices violating the provisions of this chapter.
  - c. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
  - d. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
  - e. Collect fees for examinations, initial licensures, renewal of licenses, late renewals, private practice registrations, renewal of private practice registrations, approval of continuing education providers, and administrative fees. The fees must be established by rule in amounts necessary to compensate the board for administration and enforcement of this chapter.
  - f. Employ persons to assist the board in carrying out its duties under this chapter.
3. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
4. Recommend that the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
5. Approve and administer examinations for licensing addiction counselors.
6. Collect a fee set by the board on the filing of each application for a license to practice addiction counseling.
7. Appoint or employ persons to assist the board in carrying out its duties under this chapter.

**SECTION 5. AMENDMENT.** Subsection 1 of section 43-45-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall meet ~~on~~ at least a quarterly basis. A majority of the members constitute a quorum.

**SECTION 6. AMENDMENT.** Section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.1. Licenses Initial licenses.**

1. The board shall issue an initial ~~one-year~~ license as an addiction counselor to an applicant who has met all of the following requirements:

- a. Has successfully completed coursework, approved by the board, at an accredited college or university;
  - b. Has successfully completed one or more oral or written examinations approved by the board for this purpose;
  - c. Has successfully completed an addiction counselor a clinical training program approved by the board, a practicum, and a work or accumulated experience or internship; and as established by the board by rule.
  - d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.
2. The board may grant reciprocity, on such terms and conditions as it may determine necessary, to an applicant for licensure who is in good standing as a licensed, approved, or certified addiction counselor under the laws of another state, territory of the United States, or province of Canada, or certifying body jurisdiction that imposes at least substantially the same requirements that are imposed under this chapter.
  3. An applicant who is denied licensure must be notified in writing of the reasons for denial and of the right to a hearing before the board, under chapter 28-32, if a hearing is requested within thirty days.

**SECTION 7. AMENDMENT.** Section 43-45-05.3 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-05.3. Private practice of addiction counseling.** A person may not engage in the private practice of addiction counseling unless that person:

1. ~~Is licensed under this chapter as a licensed addiction counselor.~~
2. ~~Is registered with the board as eligible for private practice under criteria established by board rule.~~
3. ~~Has a board approved system established for peer review.~~
4. Upon application prior to January 1, 1994, the board shall register as eligible for private practice of addiction counseling any licensed addiction counselor who at that time is engaged in the private practice of addiction counseling is registered with the board as eligible for private practice under criteria established by board rule.

**SECTION 8. AMENDMENT.** Section 43-45-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-06. Addiction counseling practice - Exemptions.**

1. Nothing in this chapter may be construed to prevent any person from doing work within the standards and ethics of that person's profession and calling, provided that the person does not represent to the public, by title or by use of the initials L.A.C., that the person is engaging in addiction counseling.

2. ~~Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to addiction counseling degrees from training with a board-approved clinical supervisor.~~
3. ~~Nothing in this chapter may be construed to prevent addiction counseling trainees or interns in board-approved programs approved by the board from engaging in activities required by the approved program without obtaining a license to practice addiction counseling related to training.~~

**SECTION 9. AMENDMENT.** Section 43-45-07 of the North Dakota Century Code is amended and reenacted as follows:

**43-45-07. Renewal of license.**

1. ~~The board shall annually renew the initial license of a person licensed under this chapter upon application and showing that:~~
  - a. ~~The holder of the license is in compliance with the provisions of this chapter and the rules adopted under this chapter.~~
  - b. ~~The holder of the license has successfully completed the continuing education requirements set by the board.~~
  - c. ~~The holder of a license has made payment of the renewal fees as set by the board.~~
  - d. ~~The license is not currently revoked or suspended.~~
2. ~~If the application for renewal does not meet the above conditions within six months of the expiration date of the license, the board may revoke the license. All licenses are effective when granted by the board.~~
2. All licenses of licensed addiction counselors expire on December thirty-first of every odd-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial under section 43-45-07.1 do not exist.
4. At the time of renewal the board shall require each applicant to present satisfactory evidence that the applicant has completed the continuing education requirements specified by the board.
5. If the completed application for renewal is not received by December first of the odd-numbered year, a late fee will be charged.
6. If the completed application for renewal is not received on or before the expiration date, the license expires and the person may not practice addiction counseling. The license may be renewed within thirty days from the date of expiration of the license if the completed application for renewal and the late fee are received within thirty days from the date of expiration of the license.

7. If a completed application for renewal of license is not received within thirty days from the date of expiration of the license, the licensee must reapply for licensure.
8. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

**SECTION 10. AMENDMENT.** Subsection 1 of section 43-45-07.3 of the North Dakota Century Code is amended and reenacted as follows:

1. A person ~~aggrieved by the actions of a counselor licensed under this chapter~~ may file a written complaint with the board citing the specific allegations of ~~misconduct~~ unprofessional conduct by the an addiction counselor. The board shall notify the addiction counselor of the complaint and request a written response from the addiction counselor.

**SECTION 11. EFFECTIVE DATE.** Section 2 of this Act becomes effective on January 1, 2008.

Approved March 5, 2007  
Filed March 6, 2007

## CHAPTER 384

### SENATE BILL NO. 2036

(Legislative Council)

(Industry, Business, and Labor Committee)

## PROFESSIONAL EMPLOYER ORGANIZATION LICENSING

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the licensing of professional employer organizations; to provide a penalty; and to provide an effective date.

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

**SECTION 1.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

**Definitions.** As used in this chapter:

1. "Administrative fee" means the fee charged to a client by a professional employer organization for professional employer services. The term does not include any amount of a fee which is for wages and salaries, benefits, workers' compensation coverage, payroll taxes, withholding, or other assessment paid by the professional employer organization to or on behalf of a covered employee under a professional employer agreement.
2. "Client" means any person that enters a professional employer agreement with a professional employer organization.
3. "Coemployer" means either a professional employer organization or a client.
4. "Coemployment relationship" means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific relationship, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers under a professional employer agreement and this chapter.
5. "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client, who has received written notice of coemployment with the professional employer organization, and whose coemployment relationship is under a professional employer agreement subject to this chapter. An individual who is an officer, director, shareholder, partner, or manager of the client is a "covered employee" to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that the individual is a covered employee and if the individual meets the criteria of this subsection and acts as an operational manager or performs day-to-day operational services for the client.

6. "Licensee" means a professional employer organization licensed under this chapter.
7. "Professional employer agreement" means a written contract between a client and a professional employer organization which provides for the coemployment of a covered employee, for the allocation of employer rights and obligations between the client and the professional employer organization with respect to a covered employee, and the assumption of the responsibilities required by this chapter.
8. "Professional employer organization" means a person engaged in the business of providing professional employer services. The term does not include an arrangement through which a person that does not have as its principal business activity the practice of entering a professional employer arrangement and does not hold itself out as a professional employer organization and that shares an employee with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986; an independent contractor arrangement through which a person assumes responsibility for a product produced or a service performed by the person or the person's agents and retains and exercises primary direction and control over the work performed by an individual whose services are supplied under the arrangement; or the provision of temporary help services.
9. "Professional employer services" means the entering of a coemployment relationship under this chapter.
10. "Temporary help services" means services consisting of a person recruiting and hiring its own employees; finding another organization that needs the services of those employees; assigning those employees to perform work at or services for the other organization to support or supplement the other organization's workforce, to provide assistance in special work situations, such as an employee absence, skill shortage, or seasonal workload or to perform a special assignment or project; and customarily attempting to reassign the employees to another organization when the employers finish each assignment.

### **Rights, duties, and obligations unaffected.**

1. Neither this chapter nor a professional employer agreement may affect, modify, or amend a collective bargaining agreement or any right or obligation of a client, professional employer organization, or covered employee under federal law.
2. Neither this chapter nor a professional employer agreement may:
  - a. Diminish, abolish, or remove any right of a covered employee to a client or obligation of the client to a covered employee existing before the effective date of the professional employer agreement.
  - b. Affect, modify, or amend any contractual relationship or restrictive covenant between a covered employee and a client in effect at the time a professional employer agreement becomes effective or prohibit or amend a contractual relationship or restrictive covenant that is entered subsequently between a client and a covered employee.

3. A covered employee who is required under law to be licensed, registered, or certified is deemed solely an employee of the client for purposes of the license, registration, or certification requirement.
4. Unless otherwise provided by this chapter, a professional employer organization is not deemed to engage in any occupation, trade, profession, or other activity that is subject to licensing, registration, or certification requirements or is otherwise regulated solely by entering and maintaining a coemployment relationship with a covered employee who is subject to the requirement.
5. A client has the sole right of direction and control of the professional or licensed activities of a covered employee and of the client's business. The covered employee and client remain subject to regulation by the entity responsible for licensing, registration, or certification of the covered employee or client.
6. For purposes of determination of a tax credit or other economic incentive based on employment, a covered employee is deemed an employee solely of the client. A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of a covered employee of the client. If the grant or amount of the incentive is based on the number of employees, each client must be treated as employing only those covered employees coemployed by the client. A covered employee working for another client of the professional employer organization may not be counted. Each professional employer organization shall provide, upon request by a client or an agency or department of the state, employment information reasonably required for administration of the tax credit or economic incentive and which is necessary to support any request, claim, application, or other action by a client seeking the tax credit or economic incentive.
7. With respect to a bid, contract, purchase order, or agreement entered with the state or a political subdivision, a client company's status or certification by any agency of this state as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client company has entered an agreement with a professional employer organization or uses the services of a professional employer organization.

### **Licensing requirements.**

1. After the effective date of this Act, a person may not provide, advertise, or otherwise hold itself out as providing professional employer services, unless the person is licensed under this chapter. A person engaged in the business of providing professional employer services shall obtain a license regardless of its use of the term or conducting business as a "professional employer organization", "staff leasing company", "registered staff leasing company", "employee leasing company", "administrative employer", or any other name.
2. Each applicant for licensure shall provide the secretary of state with the following information:



- a. The name of the professional employer organization and any name under which the professional employer organization intends to conduct business in this state.
  - b. The designation of organization of the applicant whether domestic or foreign; a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, sole proprietor, or any other person subject to a governing statute; and the jurisdiction of origin of the organization.
  - c. The address of the principal place of business of the professional employer organization and the address of each office it maintains in this state.
  - d. The professional employer organization's taxpayer or employer identification number.
  - e. The date of the end of the applicant's fiscal year.
  - f. A list by jurisdiction of each name under which the professional employer organization has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities.
  - g. A statement of ownership, which must include the name and address of any person that owns or controls twenty-five percent or more of the equity interests of the professional employer organization.
  - h. A statement of management, which must include the name and address of any individual who serves as president, chief executive officer, or otherwise has the authority to act as a senior executive officer of the professional employer organization.
  - i. A financial statement, verified by a certified public accountant licensed to practice in the jurisdiction in which the accountant is located, as of a date not earlier than one hundred eighty days before the date submitted to the secretary of state, which is prepared in accordance with generally accepted accounting principles. The financial statement must set forth the financial condition of the professional employer organization over the most recent twelve-month operating period and must clearly define the working capital of the professional employer organization. A professional employer organization that has not had sufficient operating history to have a financial statement based upon at least twelve months of operating history shall meet the financial capacity requirements under this chapter and present a financial statement as provided under this subdivision for the entire period of its operation.
3. A license issued under this section is valid for one year.
  4. a. Within sixty days before the expiration of a license, the licensee may apply to renew the license by submitting to the secretary of

state the information required in subsection 2 along with the required license fee.

- b. For the purposes of a renewal application, the audited and verified financial statement may be based on the twelve months of operating history before the close of the fiscal year immediately preceding the renewal date of the license. A professional employer organization that is unable to obtain an audited and verified financial statement before the expiration of a license may submit with the application for renewal:
- (1) A written request for an extension to submit the audited and verified financial statement by a specific date within six months after the license is renewed and a verified statement, signed by an individual authorized by the professional employer organization, affirming that the professional employer organization has continuously maintained sufficient working capital to meet the financial capacity requirements under this chapter; or
  - (2) A bond with a minimum value of one hundred thousand dollars to be held by the secretary of state to secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due.
- c. The secretary of state shall suspend the license of a professional employer organization if the professional employer organization fails to submit the audited and verified financial statement by the extended date provided under subdivision b.
5. A person applying for licensure or a renewal of licensure shall maintain continuously its organization's applicable records current and in good standing as otherwise required by law.
6. The secretary of state shall maintain a list of professional employer organizations licensed under this chapter.

### **Fees.**

1. Upon filing of an application for a license, a professional employer organization shall pay a fee of one thousand dollars.
2. Upon filing of an application for renewal of a license, a professional employer organization shall pay a fee of five hundred dollars.
3. Any fees collected under this chapter must be deposited in the secretary of state's operating fund.

**Financial capability.** A professional employer organization shall maintain either:

1. A minimum working capital of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state with the license application and each annual renewal; or

2. A bond with a minimum value of one hundred thousand dollars as reflected in the financial statement submitted to the secretary of state. The bond must be held by the secretary of state and secure payment by the professional employer organization of any tax, wage, benefit, or other entitlement due to or with respect to a covered employee if the professional employer organization does not make the payment when due. A bond provided under this section may not be included for the purpose of calculation of the minimum net worth required by this section.

### **General requirements.**

1. Except as specifically provided in this chapter or in a professional employer agreement, in each coemployment relationship:
  - a. The client is entitled to exercise all rights and is obligated to perform all duties and responsibilities otherwise applicable to an employer in an employment relationship.
  - b. The professional employer organization is entitled to exercise only those rights and obligated to perform only those duties and responsibilities specifically required by this chapter or set forth in the professional employer agreement. The rights, duties, and obligations of the professional employer organization as coemployer with respect to any covered employee are limited to those arising under the professional employer agreement and this chapter during the term of coemployment by the professional employer organization of the covered employee.
  - c. The client retains the exclusive right to direct and control any covered employee as is necessary to conduct the client's business, to discharge any of the client's fiduciary responsibilities, or to comply with any licensure requirements applicable to the client or to a covered employee.
2. Except as specifically provided in this chapter, a coemployment relationship between the client and the professional employer organization, and between each coemployer and each covered employee, must be governed by the professional employer agreement. Each professional employer agreement must include:
  - a. The allocation of rights, duties, and obligations.
  - b. (1) A statement that provides that:
    - (a) The professional employer organization shall pay wages to any covered employee and shall withhold, collect, report, and remit payroll-related and unemployment taxes on wages paid to the covered employee by the professional employer organization;
    - (b) The client shall accurately report all wages of a covered employee to the professional employer organization; and



- e. This subsection does not limit any contractual liability or obligation specifically provided in the written professional employer agreement.
  - f. A covered employee is not, solely as the result of being a covered employee of a professional employer organization, an employee of the professional employer organization for purposes of general liability insurance, fidelity bond, surety bond, employer's liability not covered by workers' compensation, or liquor liability insurance carried by the professional employer organization unless the covered employee is included by specific reference in the professional employer agreement and applicable prearranged employment contract, insurance contract, or bond.
5. A professional employer organization is not engaged in the sale of insurance or in acting as a third-party administrator by offering, marketing, selling, administering, or providing professional employer services which include services and employee benefit plans for a covered employee.
  6. Nothing in this chapter or in a professional employer agreement may be construed to affect the provisions of section 52-04-24 or 65-01-08.

#### **Benefit plans.**

1. Both a client and a professional employer organization are deemed to be an employer for purposes of sponsoring retirement and welfare benefit plans for a covered employee.
2. A fully insured welfare benefit plan offered to the covered employees of a professional employer organization is considered a single employer welfare benefit plan and may not be considered a multiple employer welfare arrangement.
3. For purposes of chapter 26.1-36.3, a professional employer organization is considered the employer of all of its covered employees, and all covered employees of any client participating in a health benefit plan sponsored by a single professional employer organization are considered employees of the professional employer organization.
4. If a professional employer organization offers to its covered employees any health benefit plan that is not fully insured by an authorized insurer, the plan must:
  - a. Utilize an authorized third-party administrator;
  - b. Hold all plan assets, including participant contributions, in a trust account;
  - c. Provide sound reserves for the plan as determined using generally accepted actuarial standards; and
  - d. Provide written notice to each covered employee participating in the benefit plan that the plan is self-insured or is not fully insured.

**Disciplinary actions - Complaints - Adjudicative proceedings - Penalties - Appeals.**

1. The secretary of state may:
  - a. Deny an application for a professional employer organization license;
  - b. Suspend a professional employer organization license for a period of not more than sixty months;
  - c. Request the attorney general to bring an action in district court to recover restitution or penalties imposed under this chapter; or
  - d. Not renew or issue a new professional employer organization license until a professional employer organization has paid any civil penalty or restitution imposed under this chapter.
2. Any person acting in the capacity of a professional employer organization without a license is guilty of a class A misdemeanor. In addition to the license fee due if the person subsequently applies for a license, the person may be assessed a civil penalty by the secretary of state, following written notice to the person of an intent to assess the penalty, in an amount not to exceed three times the amount of the license fee.
3. An individual may file a duly verified complaint with the secretary of state charging that the professional employer organization is guilty of any of the following:
  - a. The conviction of the professional employer organization or a controlling person of the professional employer organization of a crime that relates to the operation of the professional employer organization or which relates to fraud or deceit or the ability of the professional employer organization or the controlling person of the professional employer organization to operate the professional employer organization;
  - b. An individual knowingly making a material misrepresentation or providing false or fraudulent information to the secretary of state or other governmental agency; or
  - c. A willful violation of this chapter.
4. A complaint must be on a form approved by the secretary of state and must set forth sufficient facts upon which a reasonable individual could conclude that any of the acts or omissions in subsection 3 has been committed.
5. The secretary of state shall review a complaint filed under this section. If the secretary of state determines a complaint provides sufficient facts upon which a reasonable individual could conclude that one or more of the acts or omissions set forth in subsection 3 has been committed, the secretary of state may initiate an adjudicative proceeding under chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the secretary of state determines that

the professional employer organization is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the secretary of state may:

- a. Suspend or revoke the professional employer organization license;
  - b. Order an administrative penalty of not more than one thousand dollars for each material violation;
  - c. Order restitution in an amount not exceeding five thousand dollars;
  - d. Issue a cease and desist order; or
  - e. Impose a lesser sanction or remedy.
6. Any act or omission under subsection 3 may also constitute grounds for the attorney general to bring an action under chapter 51-15 and may subject the professional employer organization to all provisions, procedures, remedies, and penalties provided for in chapter 51-15.
7. A professional employer organization aggrieved by a decision of the secretary of state in denying, revoking, or suspending the professional employer organization license or ordering restitution or penalties may appeal the decision to the district court of Burleigh County.
8. A professional employer organization may not obtain a license under any name after the denial of an application for a license or during the period of a revocation or suspension. For the purposes of this subsection, a professional employer organization that has had an application for a license denied or which has had a license revoked or suspended includes any officer, director, agent, member, or employee of the professional employer organization.

**SECTION 2. EFFECTIVE DATE.** This Act becomes effective on October 1, 2007.

Approved April 13, 2007

Filed April 16, 2007