

MILITARY

CHAPTER 301

HOUSE BILL NO. 1138

(Education Committee)
(At the request of the Adjutant General)

AN ACT to amend and reenact sections 37-07.1-02 and 37-07.2-01 of the North Dakota Century Code, relating to tuition waivers and grants for national guard members; and to repeal section 37-07.1-06.1 of the North Dakota Century Code, relating to the national guard tuition fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

37-07.1-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "School" means any university, college, career and technical education school, technical school, or postsecondary educational institution.
2. "State-controlled school" means any school which is controlled, financially supported, and operated by the state, a school district, or any other political subdivision.
3. "Tuition" means the normal registration fee. ~~It does not include graduation, activity, or incidental fees, book rental, laboratory, service, supply, union building, hospital and medical insurance fees, or any fees established for the operation and maintenance of buildings, the income of which is pledged for the payment of interest and principal on bonds issued by the governing board of any school.~~

SECTION 2. AMENDMENT. Section 37-07.2-01 of the North Dakota Century Code is amended and reenacted as follows:

37-07.2-01. National guard tuition grants - Terms of grants. Any qualifying member of the national guard who enrolls in an accredited postsecondary institution in North Dakota may, subject to the limitations of available appropriated funds and subject to national guard rules adopted by the adjutant general, receive a grant in an amount ~~equal to the payments made pursuant to chapter 37-07.4~~ not to exceed the cost of tuition and fees for similar courses and credit hours for each qualifying member of the national guard who is enrolled at the university of North Dakota. Any accredited postsecondary institution that agrees to participate in such a program must waive twenty-five percent of the tuition for qualifying national guardsmen. These grants must be distributed according to rules promulgated by the adjutant general and are available only so long as the member maintains satisfactory performance with the guard, meets the qualification requirements of the rules, and pursues a course of study which satisfies the normal requirements of the school. ~~As~~

~~used in this chapter, the word "tuition" has the same meaning as provided in section 37-07.1-02.~~

SECTION 3. REPEAL. Section 37-07.1-06.1 of the North Dakota Century Code is repealed.

Approved March 5, 2009
Filed March 5, 2009

CHAPTER 302**HOUSE BILL NO. 1057**

(Legislative Council)
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 37-18 of the North Dakota Century Code, relating to department of veterans' affairs employees; to amend and reenact section 37-14-18 of the North Dakota Century Code, relating to county veterans' service officers; to provide for reports to the legislative council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-18 of the North Dakota Century Code is amended and reenacted as follows:

37-14-18. County veterans' service officer - Appointment - Duties. The board of county commissioners of each county of the state of North Dakota shall appoint, employ, and pay, on a full-time or part-time basis, an officer to be known as a county veterans' service officer. The veterans' affairs commissioner may work directly with county veterans' service officers. An individual may serve as a county veterans' service officer in more than one county. The appointment must be made with the prior advice of the commissioner of veterans' affairs, and in accordance with veterans' preference as provided in section 37-19.1-02. By August 1, 2011, all county veterans' service officers must be accredited by the national association of county veterans' service officers. It is the duty of the county veterans' service officer to become acquainted with the laws, both state and federal, enacted for the benefit of returning servicemen and servicewomen to assist such returning members of the armed forces in the presentation, proof, and establishment of such claims, privileges, and rights as they have. It also is the duty of the county veterans' service officer to actively cooperate with and to coordinate the activities of the state and federal agencies within the county which the officer serves to facilitate their operation and ensure promptness in the solution of the problems concerned with the reestablishment of returning servicemen and servicewomen in civilian pursuits. A county veterans' service officer may not serve as a conservator for an individual who is receiving benefits or services from the department of veterans' affairs or the United States department of veterans' affairs, except if the individual is the spouse or an immediate family member of the officer, or unless the conservator is appointed by the county under chapter 11-21.

SECTION 2. A new section to chapter 37-18 of the North Dakota Century Code is created and enacted as follows:

Department of veterans' affairs employees - Conservatorship activities prohibited. An employee of the department of veterans' affairs may not serve as a conservator for an individual who is receiving benefits or services from the department, except if the individual is the spouse or an immediate family member of the employee.

SECTION 3. DEPARTMENT OF VETERANS' AFFAIRS - TRAINING POSITIONS. The commissioner of veterans' affairs may use up to two of the

department of veterans' affairs' existing full-time equivalent positions as training officers for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 4. REPORTS TO LEGISLATIVE COUNCIL. By December 1, 2009, the commissioner of veterans' affairs shall provide to the legislative council a report regarding the number of county veterans' service officers accredited in accordance with the requirements of section 1 of this Act, the agency or organization through which each officer has been accredited, and an accountability report with respect to the use of the funds granted under section 5 of this Act for the training program offered through the department of veterans' affairs to county veterans' service officers. The commissioner shall present followup reports to the legislative council by July 1, 2010, and December 1, 2010. By December 1, 2010, the board of county commissioners of each county shall report to the legislative council the status of the county's compliance with section 1 of this Act.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000, or so much of the sum as may be necessary, to the department of veterans' affairs for the purpose of arranging for department of veterans' affairs accreditation training for all county veterans' service officers in the state, for the biennium beginning July 1, 2009, and ending June 30, 2011.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 303

SENATE BILL NO. 2133

(Government and Veterans Affairs Committee)
(At the request of the Veterans' Home)

AN ACT to create and enact a new section to chapter 37-15 of the North Dakota Century Code, relating to telephone services at the veterans' home; and to amend and reenact sections 37-15-10 and 37-15-14.1 of the North Dakota Century Code, relating to admission to and fees paid by residents of the veterans' home.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-15 of the North Dakota Century Code is created and enacted as follows:

Telephone services. Notwithstanding any other provision of law, the veterans' home may purchase or arrange for independent third-party telephone services.

SECTION 2. AMENDMENT. Section 37-15-10 of the North Dakota Century Code is amended and reenacted as follows:

37-15-10. Admittance to veterans' home - Requirements governing.

1. An applicant may not be admitted to the veterans' home unless the applicant is a bona fide resident of this state preceding the applicant's application for admission. The residency requirement may be waived if the applicant served in a North Dakota regiment or was accredited to this state.
2. The spouse or surviving spouse of those mentioned in subsection 1 of section 37-15-02 may be admitted upon the same footing as the veteran.
3. An individual may not be admitted to the home until that individual has made formal application and furnished ~~such the proof as may be that is~~ required by the ~~administrative committee on veterans' affairs home~~ and the application has been approved by the board of admissions of the ~~institution that the committee has designated~~ home.
4. When a member of the home who is not eligible for veterans' administration hospitalization and care becomes unable from any cause to care for oneself under rules adopted by the ~~administrative committee on veterans' affairs veterans' home governing board~~ for the admission and care of members in the home, the member becomes a charge of the county of residence at the time of admission. An individual may not gain or lose legal residence by reason of residence in or being a member of the veterans' home.

SECTION 3. AMENDMENT. Section 37-15-14.1 of the North Dakota Century Code is amended and reenacted as follows:

37-15-14.1. Membership contribution Fees for residents of veterans' home - Special fund.

1. The ~~administrative committee on veterans' affairs~~ veterans' home governing board may establish a membership contribution fees to be paid by members of the veterans' home. The ~~fee fees~~ must be based on the adjusted income of each member, but may not exceed forty-nine percent of the average daily per member cost. The ~~membership contribution fees~~ must be set under a formula determined by the ~~administrative committee veterans' home governing board~~ and designed to assure dignity and equity in the charge. The ~~administrative committee veterans' home governing board~~ may reconsider its action establishing a membership contribution fees, amend or rescind the contribution charge fees, or reinstate a contribution charge fees previously rescinded. The administrator of the veterans' home shall collect monthly any membership contribution fees levied.
2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:
 - a. ~~Moneys earned during authorized leaves or furloughs from the veterans' home.~~
 - b. ~~Moneys expended by the member for hospitalization due to illness or injury.~~
 - e. b. Moneys expended by the member for other medical care or treatment, or for required medicines.
 - d. c. Such other receipts or expenditures as the ~~administrative committee veterans' home governing board~~ may permit to be deducted in individual cases.
3. All moneys received as a result of charging the ~~membership contribution fees~~ authorized by subsection 1 must be deposited in the veterans' home operating fund.

Approved April 21, 2009

Filed April 22, 2009

CHAPTER 304

HOUSE BILL NO. 1053

(Legislative Council)
(Public Safety Committee)

AN ACT to amend and reenact sections 37-17.1-06 and 37-17.1-07 of the North Dakota Century Code, relating to the department of emergency services division of homeland security and local and regional emergency management organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-06. State division of homeland security.

1. The division of homeland security must have professional, technical, secretarial, and clerical employees as necessary for the performance of its functions. The director of the division shall fix the compensation of the staff in conformity with state merit system regulations and may make such expenditures within the appropriations therefor, or from other funds made available to the director for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.
2. The division of homeland security shall prepare and maintain a state disaster plan and keep it current, which plan may include provisions for:
 - a. Averting or minimizing the injury and damage caused by disasters or emergencies.
 - b. Prompt and effective response to a disaster or emergency.
 - c. Emergency relief.
 - d. Identification of areas particularly vulnerable to a disaster or emergency.
 - e. Recommendations for zoning, building, and other land use controls, safety measures for securing mobile homes or other nonpermanent or semipermanent structures, and other mitigation and preparedness measures.
 - f. Assistance to local officials in developing and maintaining local and regional emergency management systems.
 - g. Authorization and procedures for the erection or other construction of temporary works designed to protect against or mitigate danger, damage, or loss from any disaster or emergency.
 - h. Preparation and distribution of emergency management assistance program guidance to the appropriate state and local officials.

- i. Organization of manpower and chains of command.
 - j. Coordination of federal, state, regional, and local emergency management activities.
 - k. Coordination of state disaster or emergency operations plans with the disaster or emergency plans of the federal government.
 - l. Other necessary matters.
3. The division of homeland security shall provide technical assistance for the development and revision of local and regional disaster or emergency operations plans prepared under section 37-17.1-07.
4. In preparing and revising state disaster or emergency plans, the division of homeland security shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic, and volunteer organizations and community leaders. In advising local and regional emergency management organizations, the division shall encourage them also to seek advice from these sources.
5. State disaster or emergency plans or any parts thereof have the force of law upon implementation by the governor.
6. The division of homeland security, in coordination with lead and support agencies, shall:
 - a. Coordinate the procurement of supplies, materials, and equipment during disaster or emergency operations.
 - b. Provide guidance and standards for local and regional disaster or emergency operational plans.
 - c. Periodically review local and regional disaster or emergency operational plans.
 - d. Coordinate state or state and federal assistance to local and regional emergency management organizations.
 - e. Establish and operate or assist local and regional emergency management organizations to establish and operate training programs and programs for emergency public information.
 - f. Make surveys of industries, resources, and facilities, within the state, both public and private, as are necessary to carry out the purposes of this chapter. The use of sensitive and proprietary logistical data submitted to the state in confidence by individual industries and suppliers must be accorded full confidentiality and will be released only in aggregate form.
 - g. Plan and make arrangements for the availability and use of any private facilities, services, and property, and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.

- h. Establish access to a register of persons with types of training and skills important in prevention, mitigation, preparedness, response, and recovery.
- i. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
- j. Prepare, for issuance by the governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
- k. Coordinate and may enter agreements with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster mitigation, preparation, response, and recovery.
- l. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization.
- m. Do other things necessary, incidental, or appropriate for the implementation of this chapter.

SECTION 2. AMENDMENT. Section 37-17.1-07 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-07. Local or regional emergency management organizations.

1. All areas of the state are within the jurisdiction of and must be served by the division of homeland security and by a local or regional emergency management organization.
2. Each county shall maintain an emergency management organization ~~which that~~ serves the entire county or must be a member of a regional emergency management organization that serves more than one county.
3. Each city shall provide an emergency management organization of its own, or it shall participate in the countywide emergency management organization. Each governing board of a city shall make its determination on the basis of the city's emergency management requirements, hazards, capabilities, and resources. If a city provides an emergency management organization of its own, the city and county shall coordinate the city and county emergency plans.
4. The mayor of or the president of the board of city commissioners in a city with an emergency management organization and the chairman of the board of county commissioners shall notify the division of homeland security of the manner in which the city and the county are providing or securing emergency management activities, identify each individual who will coordinate the activities of the local emergency management organization, and furnish additional information relating thereto as the division requires.

5. Each local or regional emergency management organization shall prepare and keep current a local disaster or emergency operational plan for its area.
6. ~~The~~ Each local or regional emergency management organization shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the disaster or emergency responsibilities of their local agencies and officials.

Approved April 28, 2009
Filed May 1, 2009

CHAPTER 305**HOUSE BILL NO. 1484**

(Representatives Carlson, Boucher)

(Senators Stenehjem, O'Connell)

(At the request of the Governor)

AN ACT to amend and reenact subdivision c of subsection 2 of section 37-17.1-07.1 of the North Dakota Century Code, relating to hazardous chemical fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 2 of section 37-17.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of homeland security by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is ~~one hundred fifty~~ four hundred seventy-five dollars. The division of homeland security shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 306**HOUSE BILL NO. 1451**

(Representatives Hunskor, DeKrey, Froseth, Mueller)
(Senators Andrist, Erbele)

AN ACT to create and enact a new section to chapter 37-17.1 of the North Dakota Century Code, relating to a ban on open burning; to amend and reenact section 37-17.1-10 of the North Dakota Century Code, relating to a ban on open burning; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-10 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-10. Local disasters or emergencies - Penalty.

1. Unless so declared in accordance with the provisions of subsection 4 of section 37-17.1-05, a local disaster or emergency may be declared only by the principal executive officer of the county or city. It may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the county or city. Any order or proclamation declaring a local disaster or emergency must be given prompt and general publicity and must be filed promptly with the county or city auditor.
2. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of any and all applicable local disaster or emergency operational plans and to authorize the furnishing of aid and assistance thereunder.
3. ~~An order or proclamation issued under this section which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of an infraction.~~

SECTION 2. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Burn ban - Penalty. An order or proclamation under section 37-17.1-10 which includes a ban on open burning may provide for a penalty for a violation of the ban through a citation, a criminal complaint, or an information through the district court in the county in which the offense occurred. An individual who willfully violates a burning ban established by a local order or proclamation under this section is guilty of a class B misdemeanor.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 307

HOUSE BILL NO. 1128 (Political Subdivisions Committee) (At the request of the Adjutant General)

AN ACT to amend and reenact section 37-17.1-16 of the North Dakota Century Code, relating to immunity and exemptions for actions in response to emergency management; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-16 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-16. Immunity and exemption.

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. ~~Neither the~~ The state nor any, a county or city ~~or its departments and agencies, or any disaster or emergency worker, or any other person providing goods or services during an emergency if the person is working in coordination with and under the direction of an appropriate governmental emergency or disaster response entity, complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state,~~ except in case of willful misconduct, gross negligence, or bad faith, is not liable for the death of or injury to persons, or for damage to property, as a result of any such activity. This section does not affect the right of any person to receive benefits to which that person would otherwise be entitled under this chapter, or under workforce safety and insurance law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.
2. Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing ~~their~~ the worker's duties, practices ~~such~~ the professional, mechanical, or other skill during a disaster or emergency.
3. This section does not affect any other provision of law that may provide immunity to a person that is providing volunteer assistance.

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

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 308**HOUSE BILL NO. 1048**

(Legislative Council)
(Public Safety Committee)

AN ACT to create and enact a new section to chapter 37-17.1 of the North Dakota Century Code, relating to intrastate mutual aid; and to repeal sections 37-17.1-24 and 37-17.1-25 of the North Dakota Century Code, relating to mutual intrastate mutual aid agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Intrastate mutual aid agreements. The department of emergency services shall prepare and distribute to political subdivisions guidelines and model intrastate mutual aid agreements to provide a system for mutual assistance among political subdivisions in the prevention of, response to, and recovery from a local disaster or emergency. To access state funds for disaster response and recovery during a nonfederally declared disaster, counties and cities shall participate in intrastate mutual aid and shall take all necessary steps to ensure eligibility for federal funds.

SECTION 2. REPEAL. Sections 37-17.1-24 and 37-17.1-25 of the North Dakota Century Code are repealed.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 309

SENATE BILL NO. 2163

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

AN ACT to create and enact chapter 37-17.3 of the North Dakota Century Code, relating to the state radio broadcasting system; and to repeal chapter 54-23.2 of the North Dakota Century Code, relating to the state radio broadcasting system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

37-17.3-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the division of state radio.
2. "Division" means the division of state radio of the department of emergency services.
3. "Mobile radio" means a radio capable of transmitting eleven watts or greater.
4. "System" means the state radio broadcasting system consisting of the state radio network and North Dakota telecommunications system that may be employed to enhance interoperable communications that promotes officer and citizen safety.

37-17.3-02. State radio broadcasting system. The director may purchase the necessary apparatus and equipment to construct or establish a radio broadcasting system for this state that enables seamless interoperable communications from local, state, and federal levels. The director is charged with the operation and maintenance of the system.

37-17.3-03. Political subdivisions may furnish receiving and transmitting sets for enforcement purposes. Each county and organized city within the state may furnish to its law enforcement, firefighters, and emergency medical personnel the appropriate radio or radio systems that can access the state radio system. Each mobile radio that is programmed to access the state radio system must be registered with the division of state radio and assigned a unit number. A one-time fee of ten dollars for registering and assigning unit numbers must be paid to the director on all newly added radios by the appropriate governmental entity. Agencies with registered radios must validate assigned unit numbers annually.

37-17.3-04. Broadcasting dispatches - Reports required. The director shall broadcast all dispatches and reports submitted which have a reasonable relation to or connection with the apprehension of criminals, the prevention of crimes,

or the maintenance of peace and order in the state, including disaster emergency services.

37-17.3-05. Emergency service for certain messages. Every telephone company and company providing communications equipment operating within this state shall provide emergency service to all messages or calls directed to any station of the system.

37-17.3-06. Official use of radio equipment on private automobiles prohibited without permit. No person may equip or use in a privately-owned automobile or any other motor vehicle a mobile two-way radio equipped for transmitting and receiving on any frequency authorized for first responder use in the state of North Dakota without first applying for and securing a permit from the director. This section does not apply to the use of a two-way citizens' band radio, a two-way business radio, or a two-way amateur radio in an automobile or any other motor vehicle.

37-17.3-07. Maintenance of radio system - Personnel, equipment, and expense. The director may employ such radio operators and assistants and such radio equipment as the director may deem necessary to carry out the provisions of this chapter and shall fix the compensation of such personnel. The cost of maintenance and operation of the system and all shortwave length radio receiving and transmitting sets owned or operated by the state must be paid out of the appropriation for this purpose.

37-17.3-08. State radio system and service fees. The director shall establish the appropriate fees for access to the state radio system and the service provided to local government users of the mobile data terminal system and North Dakota law enforcement telecommunications systems and other such systems that may be employed that enhance public safety. Changes to fees charged by the division, including schedule of charges for counties and cities, will take effect on July first. The director shall announce any fee increases a minimum of one year prior to the effective date. When the director considers an adjustment, as a part of the process the director shall consult with representatives of state and local units of government prior to setting fees. The director may consider economic conditions and the general economy when setting fees. The director shall deposit all revenue obtained under this chapter with the state treasurer for deposit in the state radio broadcasting system operating account. The state radio broadcasting system operating account must be expended pursuant to legislative appropriation for the operation and maintenance of the system. Fee structures will include:

1. Mobile data terminal fees. The division shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by the division for providing the service and will be levied on a per system user basis. State general fund agencies that access the system will not incur any fees for the service.
2. Each county and city law enforcement department that accesses the North Dakota teletype system shall pay a fee based upon fifty percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. Other law enforcement affiliated organizations and federal agencies will pay one hundred percent of the actual costs incurred by the division for providing the service. Fees will be levied on a per terminal basis. State general fund agencies that access the system will not incur any fees for the service. City and

county law enforcement fees will be based on the following schedule of charges per terminal:

- a. County population of less than five thousand shall pay thirty dollars per month.
- b. County population of five thousand or more but less than ten thousand shall pay sixty dollars per month.
- c. County population of ten thousand or more but less than fifteen thousand shall pay ninety dollars per month.
- d. County population of fifteen thousand or more but less than twenty-five thousand shall pay one hundred twenty dollars per month.
- e. County population of twenty-five thousand or more shall pay one hundred sixty dollars per month.

37-17.3-09. Public safety answering point service and fees. The division may provide 911 services to a political subdivision with a population of fewer than twenty thousand and shall charge the apportioned amount consistent with the actual costs of providing the service per telephone access line and wireless access line for 911 services provided to political subdivisions. The fee for 911 wireless services must be charged to and paid by the political subdivision receiving services from the division under this section from and after the date of the agreement entered into by the political subdivision or its designee under section 57-40.6-05, whether the date of that agreement is before or after April 4, 2003. Each county currently receiving 911 services from the division shall abide by the standards established by law.

37-17.3-10. Lost or missing individuals. The division shall:

1. Establish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or missing individuals.
2. Implement a data exchange system to compile, maintain, and make available for dissemination to North Dakota and to out-of-state law enforcement agencies descriptive information to assist appropriate agencies in recovering lost or missing individuals.
3. Establish contacts and exchange information regarding lost or missing individuals with the national crime information center.
4. Notify each enforcement agency that a report of lost or missing individuals must be entered as soon as the minimum level of data specified by the division is available to the reporting agency and that no waiting period for entry of that data exists. If the enforcement agency is unable to enter the data, the division shall enter the information into the national crime information center file immediately upon notification.
5. Compile and retain information regarding lost or missing individuals in a separate file, in a manner that allows the information to be used by law enforcement and other agencies considered appropriate for investigative purposes by the division. The enforcement agency is responsible for maintaining the disposition of the case and periodically

shall review the case with the reporting party and the division to ensure all available information is included and to determine the current status of the case. As used in this subsection, "individual" means an individual who is eighteen years of age or older.

6. Provide prompt confirmation of the receipt and entry of the lost or missing individuals report into the file system to the enforcement agency providing the report or to the parent, guardian, or identified family member as provided in subsection 7.
7. If any parent, guardian, or identified family member is unable to receive services from the local law enforcement agency, allow the parent, guardian, or identified family member to submit a lost or missing individuals report to the division which must be included in the division file system and transmitted to the national crime information center.
8. Compile and maintain a historical data repository relating to lost or missing individuals for the following purposes:
 - a. To develop and improve techniques utilized by law enforcement agencies when responding to reports of lost or missing individuals; and
 - b. To provide a factual and statistical base for research that addresses the problem of lost or missing individuals.

SECTION 2. REPEAL. Chapter 54-23.2 of the North Dakota Century Code is repealed.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 310

HOUSE BILL NO. 1073

(Human Services Committee)

(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 37-17.3 and a new section to chapter 65-06 of the North Dakota Century Code, relating to adoption of the Uniform Emergency Volunteer Health Practitioners Act and workers' compensation coverage of volunteers; and to amend and reenact section 65-06-05 of the North Dakota Century Code, relating to workers' compensation coverage of volunteers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.3 of the North Dakota Century Code is created and enacted as follows:

37-17.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and which:
 - a. Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government, the state department of health, or the state board of animal health; or
 - b. Regularly plans and conducts its activities in coordination with an agency of the federal government, the state department of health, or the state board of animal health.
2. "Emergency" means an event or condition that is a disaster or an emergency as defined under chapter 37-17.1 and any event, condition, or incident for which the deployment of volunteer health practitioners is determined to be necessary by the state health officer, a local board of health, or the state veterinarian.
3. "Emergency declaration" means a declaration or proclamation of disaster or emergency issued by the governor.
4. "Emergency management assistance compact" means the interstate compact approved by Congress by Public Law No. 104-321 [110 Stat. 3877].
5. "Entity" means a person other than an individual.
6. "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

7. "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services and any other individual performing nonmedical support disaster or emergency responsibilities or duties at any place in this state subject to the order or control of, or pursuant to a request of, the state department of health or a local public health unit and deployed through the emergency system for advance registration of volunteer health professionals.
8. "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:
 - a. The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:
 - (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and
 - (2) Counseling, assessment, procedures, or other services;
 - b. Sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and
 - c. Funeral, cremation, cemetery, or other mortuary services.
9. "Host entity" means an entity operating in this state which uses volunteer health practitioners to respond to an emergency.
10. "License" means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.
11. "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.
12. "Veterinary services" means the provision of treatment, care, advice or guidance, or other services, or supplies related to the health or death of an animal or animal populations, to the extent necessary to respond to an emergency, including:
 - a. Diagnosing, treating, or preventing an animal disease, injury, or other physical or mental condition by prescribing, administering, or dispensing vaccine, medicine, surgery, or therapy;
 - b. Using a procedure for reproductive management; and
 - c. Monitoring and treating animal populations for diseases that have spread or demonstrate the potential to spread to humans.

13. "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services. The term does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate which requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state during an emergency.

37-17.3-02. Applicability to volunteer health practitioners. This chapter applies to volunteer health practitioners registered with a registration system that complies with section 37-17.3-04 and who provide health or veterinary services in this state for a host entity during an emergency.

37-17.3-03. Regulation of services during emergencies.

1. During an emergency, the state department of health or the state board of animal health may limit, restrict, or otherwise regulate:
 - a. The duration of practice by volunteer health practitioners;
 - b. The geographical areas in which volunteer health practitioners may practice;
 - c. The types of volunteer health practitioners who may practice; and
 - d. Any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.
2. An order issued under subsection 1 may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.
3. A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:
 - a. Consult and coordinate its activities with the state department of health or the state board of animal health to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and
 - b. Comply with any laws other than this chapter relating to the management of emergency health or veterinary services, including chapters 23-27 and 43-29.

37-17.3-04. Volunteer health practitioner registration systems.

1. In the case of a volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency, the volunteer health practitioner registration system is the emergency system for advance registration of volunteer health professionals and is maintained by the state department of health and is known as the public health emergency volunteer medical reserve corps.
2. In the case of a volunteer health practitioner who is not covered under subsection 1, the volunteer health practitioner registration system is the

system established under subsection 1 or a system that qualifies under this subsection. To qualify as a volunteer health practitioner registration system under this subsection, a system must:

- a. Accept applications for the registration of volunteer health practitioners before or during an emergency;
 - b. Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;
 - c. Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and
 - d. Meet one of the following conditions:
 - (1) Be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the United States department of health and human services under section 3191 of the Public Health Services Act [42 U.S.C. 247d-7b];
 - (2) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to section 2801 of the Public Health Services Act [42 U.S.C. 300hh]; or
 - (3) Be operated by a:
 - (a) Disaster relief organization;
 - (b) Licensing board;
 - (c) National or regional association of licensing boards or health practitioners;
 - (d) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or
 - (e) Governmental entity.
3. During an emergency, the state department of health, a person authorized to act on behalf of the state department of health, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection 1 or 2. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.
 4. Upon request of a person in this state authorized under subsection 3, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

5. A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

37-17.3-05. Recognition of volunteer health practitioners licensed in other states.

1. During an emergency, a volunteer health practitioner, registered with a registration system that complies with section 37-17.3-04 and licensed and in good standing in the state upon which the practitioner's registration is based, may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.
2. A volunteer health practitioner qualified under subsection 1 is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

37-17.3-06. No effect on credentialing and privileging.

1. In this section:
 - a. "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.
 - b. "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.
2. This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards during an emergency.

37-17.3-07. Provision of volunteer health or veterinary services - Administrative sanctions.

1. Subject to subsections 2 and 3, a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of this state.
2. Except as otherwise provided in subsection 3, this chapter does not authorize a volunteer health practitioner to provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the services.
3. The state department of health or the state board of animal health may modify or restrict the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of chapter 28-32.

4. A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.
5. A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the services. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:
 - a. The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or
 - b. From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.
6. In addition to the authority granted by law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:
 - a. May impose administrative sanctions upon a health practitioner licensed in this state for conduct outside of this state in response to an out-of-state emergency;
 - b. May impose administrative sanctions upon a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and
 - c. Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.
7. In determining whether to impose administrative sanctions under subsection 6, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

37-17.3-08. Relation to other laws.

1. This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection 2, this chapter does not affect requirements for the use of health practitioners pursuant to the emergency management assistance compact.
2. The department of emergency services, pursuant to the emergency management assistance compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or

employees of this state, a political subdivision of this state, or a municipality or other local government within this state.

37-17.3-09. Regulatory authority. The health council may adopt rules to implement this chapter. In doing so, the health council shall consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity of application of this chapter and make the emergency response systems in the various states reasonably compatible.

37-17.3-10. Limitations on civil liability for volunteer health practitioners.

1. Subject to subsection 3, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is not liable for damages for an act or omission of the practitioner in providing those services.
2. A person is not vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection 1.
3. This section does not limit the liability of a volunteer health practitioner for:
 - a. Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;
 - b. An intentional tort;
 - c. Breach of contract;
 - d. A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or
 - e. An act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.
4. A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a volunteer health practitioner registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.
5. In addition to the immunity provided in subsection 1, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is entitled to all the rights, privileges, or immunities provided by state laws limiting liability of volunteers.

37-17.3-11. Workers' compensation coverage.

1. Except as provided in subsection 2, a volunteer health practitioner who dies or is injured as the result of providing health or veterinary services as provided under this chapter is not considered to be an employee of this state for the purpose of receiving benefits under title 65 and must be

treated for the purposes of North Dakota law as an individual eligible for workers' compensation or similar benefits under the law of the state in which the volunteer is qualified for service under an emergency system for advance registration of volunteer health practitioners authorized under subsection 2 of section 37-17.3-04.

2. A volunteer health practitioner whose principal practice is located in this state and who is licensed by a North Dakota professional board or agency who dies or is injured as a result of providing health or veterinary services as provided under this chapter is eligible for benefits as provided under title 65 if the volunteer is qualified and serving under the emergency system for advance registration of volunteer health practitioners of this state under subsection 1 of section 37-17.3-04.

SECTION 2. AMENDMENT. Section 65-06-05 of the North Dakota Century Code is amended and reenacted as follows:

65-06-05. Reimbursement by state for liability in excess of premiums collected. Whenever liability on claims against the fund credited to the classification of ~~volunteer emergency or disaster emergency volunteers and trainees or volunteer health practitioners as defined under chapter 37-17.3~~ exceeds the amount of premiums paid into ~~such~~ the fund, such excess liabilities ~~shall be~~ are a general obligation of the state of North Dakota and must be reimbursed to the organization for credit to the workforce safety and insurance fund by legislative appropriation.

SECTION 3. A new section to chapter 65-06 of the North Dakota Century Code is created and enacted as follows:

Uniform Emergency Volunteer Health Practitioners Act - Health practitioners. A volunteer health practitioner under subsection 2 of section 37-17.3-11 is eligible for benefits as provided under this chapter.

Approved April 28, 2009

Filed May 1, 2009

CHAPTER 311

HOUSE BILL NO. 1510

(Representatives Dosch, L. Meier)

AN ACT to amend and reenact subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans' preference.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 37-19.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

Approved April 28, 2009

Filed May 1, 2009

CHAPTER 312

HOUSE BILL NO. 1482

(Representatives Carlson, Boucher)
(Senators Stenehjem, O'Connell)
(At the request of the Governor)

AN ACT to amend and reenact sections 37-28-02 and 37-28-03 of the North Dakota Century Code, relating to the definition of foreign service and period of service and payment of adjusted compensation for domestic and foreign service; to amend and reenact section 6 of chapter 17 of the 2005 Session Laws, as amended by section 10 of chapter 42 of the 2007 Session Laws, relating to payment of adjusted compensation for veterans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-28-02 of the North Dakota Century Code is amended and reenacted as follows:

37-28-02. Definitions. As used in this chapter:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
 - a. The surviving unremarried husband or wife as of the date of signing the application;
 - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
 - c. The surviving person standing in loco parentis; or
 - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran after December 5, 1992, for which the veteran received an armed forces expeditionary medal or campaign badge or performed service overseas in direct support to the global war on terror.
5. "Honorable and faithful" means service evidenced by:
 - a. An honorable discharge, or its equivalent;
 - b. In the case of an officer, a certificate of service; and

- c. In the case of a veteran who has not been discharged, a certificate from the appropriate service authority that the veteran's service was honorable and faithful.
6. "Period of service" means the period of time beginning December 5, 1992, and ending June 30, ~~2009~~ 2011.
7. a. "Resident" means a veteran who was a bona fide resident of the state of North Dakota at the time of mobilization or, in the case of an active component member, at the time of deployment for which the member received an expeditionary medal or campaign badge, as determined under the rules of the adjutant general and the laws of this state. "Resident" includes all mobilized members of the North Dakota national guard.
b. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 12302 and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, or active component member awarded the expeditionary medal or campaign badge for service after December 5, 1992, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

SECTION 2. AMENDMENT. Section 37-28-03 of the North Dakota Century Code is amended and reenacted as follows:

37-28-03. Payment of adjusted compensation for domestic and foreign service. Each national guard or reserve component resident veteran mobilized stateside is entitled to fifty dollars for each month or major fraction thereof for domestic service; ~~not to exceed nine hundred dollars~~. Each national guard, reserve, or active component resident veteran of foreign service who received the expeditionary medal or campaign badge is entitled to one hundred dollars for each month or major fraction thereof; ~~not to exceed one thousand eight hundred dollars~~. ~~Combined totals for stateside and foreign service may not exceed one thousand eight hundred dollars~~. If the veteran received a purple heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation related to the mobilization during which the purple heart was earned. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this chapter to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general through June 30, ~~2009~~ 2011, or in the case of a soldier mobilized on June 30, ~~2009~~ 2011, not later than six months after the end of the mobilization period of service.

SECTION 3. AMENDMENT. Section 6 of chapter 17 of the 2005 Session Laws, as amended by section 10 of chapter 42 of the 2007 Session Laws, is amended and reenacted as follows:

SECTION 6. EXEMPTION - TRANSFER. Any unexpended general fund appropriation authority relating to the \$5,000,000 appropriated in section 3 of this Act for the payment of adjusted compensation to veterans is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation must be transferred to the veterans' cemetery trust fund during the biennium beginning July 1, ~~2009~~ 2011, and ending June 30, ~~2014~~ 2013.

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

Approved March 19, 2009

Filed March 24, 2009

CHAPTER 313

HOUSE BILL NO. 1181

(Representatives DeKrey, Belter, Martinson, Metcalf)
(Senators Dotzenrod, Hogue)

AN ACT to create and enact chapter 37-29 of the North Dakota Century Code, relating to job protections for volunteer emergency responders of the adjutant general's office; to amend and reenact section 54-06-27 of the North Dakota Century Code, relating to public service job protections for volunteer emergency responders; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁶ **SECTION 1.** Chapter 37-29 of the North Dakota Century Code is created and enacted as follows:

37-29-01. Definitions.

1. As used in this chapter, unless the context otherwise requires:
 - a. "Disaster or emergency" means circumstances resulting in a volunteer emergency responder acting in the capacity as a volunteer emergency responder.
 - b. "Volunteer emergency responder" means an individual in good standing as:
 - (1) A volunteer member of the North Dakota army national guard or North Dakota air national guard; or
 - (2) A volunteer civilian member of the civil air patrol.

37-29-02. Discrimination prohibited in hiring practices - Civil actions.

An employer may not discriminate from hiring or otherwise deny employment to an individual who is a volunteer emergency responder, based on the fact the individual is a volunteer emergency responder. A volunteer emergency responder who is discriminated against or denied employment under this section may bring a civil action against the employer that violated this section, seeking reasonable reparations for damages caused due to the discrimination or denial of employment. A civil action under this section must be commenced within one year of the date of the violation.

37-29-03. Discrimination prohibited in employment practices - Limitations - Verification - Civil actions.

¹²⁶ Section 37-29-03 was also amended by section 14 of House Bill No. 1016, chapter 16.

1. An employer may not terminate or demote an employee who is a volunteer emergency responder or in any other manner discriminate against that employee in the terms and conditions of employment based upon the employee being absent or tardy from employment due to serving as a volunteer emergency responder in responding to a disaster or emergency.
2. An employee who is terminated, demoted, or otherwise discriminated against in violation of this section may bring a civil action against the employer that violated this subsection. In the civil action, the employee may seek reinstatement to the employee's former position; payment of back wages; reinstatement of fringe benefits; and if seniority rights are granted, the employee may seek reinstatement of seniority rights. A civil action under this section must be commenced within one year of the date of the violation.
3. Subsection 1 does not apply if due to serving as a volunteer emergency responder, the employee is absent or tardy from the employee's place of employment for a period that exceeds ten regular business days in a calendar year.
4. In order to receive the protections of subsection 1, an employee who will be absent or tardy from the employee's place of employment while serving as a volunteer emergency responder in the case of a disaster or emergency shall make reasonable efforts to notify the employer of that service and shall continue to make those reasonable notification efforts over the course of the absence.
5. An employer may request that an employee provide the employer with written verification of times and dates of instances during which the employee was absent or tardy from employment due to serving as a volunteer emergency responder in the case of a disaster or emergency. Verification under this subsection may include a statement from the department of emergency services, the adjutant general's office, the North Dakota wing of the civil air patrol, or other appropriate entity.
6. This section does not limit an employer from charging against an employee's regular pay the time the employee is absent or tardy from employment while serving as a volunteer emergency responder to a disaster or emergency.

37-29-04. Exceptions.

1. Subsection 1 of section 37-29-03 is not applicable if the employer is a state agency, an agency of a political subdivision, or a private entity that performs critical emergency services during a disaster or emergency, and the employer's executive officer determines the absence of an employee who is also a volunteer emergency responder will cause undue hardship or the inability of the employer to provide critical emergency services during a disaster or emergency. Under this subsection the executive officer shall:
 - a. Make all reasonable efforts to inform an employee who is a volunteer emergency responder that the employment services that employee performs are essential and therefore that employee's

absence from the workplace will be unauthorized if the employee is called to report for duty as a volunteer emergency responder.

- b. Provide the employee notification of the determination the absence is unauthorized before the employee reports for duty as a volunteer emergency responder.
- 2. Subsection 1 of section 37-29-03 is not applicable if the employer is a private entity and the employer's executive officer in charge of the private entity determines the employment services provided by an employee who is a volunteer emergency responder are so critical the services cannot be performed by another employee and the employee's absence will create the potential for irreparable harm to or permanent closure of the private entity. Under this subsection the executive officer shall:
 - a. Make all reasonable efforts to inform an employee who is a volunteer emergency responder that the employment services that employee performs are essential and therefore that employee's absence from the workplace will be unauthorized if the employee is called to report for duty as a volunteer emergency responder.
 - b. Provide the employee notification of the determination the absence is unauthorized before the employee reports for duty as a volunteer emergency responder.
- 3. The governor or adjutant general may supersede the decision of the executive officer which was made under subsection 1 or 2 if the governor or adjutant general determines the nature of the emergency or disaster is so serious that the services provided by the volunteer emergency responder are key and essential to the emergency response efforts and public safety responsibilities of the adjutant general's office.

¹²⁷ **SECTION 2. AMENDMENT.** Section 54-06-27 of the North Dakota Century Code is amended and reenacted as follows:

54-06-27. Emergency service volunteers - Leave. Upon issuance of an order or proclamation declaring a state of disaster or emergency pursuant to chapter 37-17.1, a search emergency by the air force rescue coordination center or by the department of emergency services, or a declaration of at least a level II disaster by the American red cross in this or any other state, the executive officer in charge of a state agency or the governing body of any political subdivision may grant a leave of absence to any full-time employee of that governmental entity who is an emergency medical service provider, a member of the civil air patrol, a firefighter, police officer, volunteer member of the North Dakota army or air national guard, or emergency radio operator, or who performs other services necessary in an emergency. The leave of absence must be for the purpose of allowing that employee to provide voluntary emergency services. ~~A person~~ An individual on leave under this section is not deemed to be an employee of the governmental entity for the purposes of workforce safety and insurance. The cumulative leave granted under this section

¹²⁷ Section 54-06-27 was also amended by section 15 of House Bill No. 1016, chapter 16.

may not exceed ~~five~~ ten working days during any calendar year. The leave may not result in a loss of compensation, seniority, annual leave, sick leave, or accrued overtime for which the employee is otherwise eligible.

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

Approved March 24, 2009

Filed March 24, 2009