

HOUSE BILL NO. 1191

Introduced by

Representatives Louser, Kasper, Motschenbacher, Ostlie, D. Ruby

Senators Larsen, Paulson, Vedaa

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to regulation of auctioneers and clerks; to amend and reenact subsection 2 of
3 section 12-60-24 and section 49-07-01.1 of the North Dakota Century Code, relating to criminal
4 history record checks of licenses and cross-references; to repeal chapter 51-05.1 of the North
5 Dakota Century Code, relating to auctioneers' and clerks' licenses; to provide a penalty; to
6 provide an appropriation; and to provide for application.

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

8 **SECTION 1. AMENDMENT.** Subsection 2 of section 12-60-24 of the North Dakota Century
9 Code is amended and reenacted as follows:

- 10 2. The bureau of criminal investigation shall provide to each agency, official, or entity
11 listed in this subsection who has requested a statewide and nationwide criminal history
12 record check, the response of the federal bureau of investigation and any statewide
13 criminal history record information that may lawfully be made available under this
14 chapter:
- 15 a. The governing body of a city or a county, by ordinance or resolution, for a final
16 applicant for a specified occupation with the city or county.
 - 17 b. The agriculture commissioner for each applicant for a license to grow or process
18 hemp under section 4.1-18.1-02.
 - 19 c. The education standards and practices board for initial, re-entry, and reciprocal
20 teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance
21 and counseling services under section 15.1-13-23.
 - 22 d. The North Dakota board of medicine for licenses or disciplinary investigations
23 under section 43-17-07.1, except that criminal history record checks need not be
24 made unless required by the board.

- 1 e. The private investigative and security board for licenses or registrations under
2 section 43-30-06.
- 3 f. The department of health and human services for foster care licenses, approvals,
4 and identified relatives under chapter 50-11, appointments of legal guardians
5 under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except
6 that the criminal history record investigation must be conducted in accordance
7 with those chapters. A criminal history record investigation completed under
8 chapter 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a
9 criminal history record investigation under either of the other two chapters.
- 10 g. The department of health and human services for criminal history record checks
11 authorized under section 50-06-01.9.
- 12 h. The chief information officer of the information technology department for certain
13 individuals under section 54-59-20.
- 14 i. A public peace officer training school that has been approved by the peace officer
15 standards and training board for enrollees in the school. The school may only
16 disclose the criminal history record information as authorized by law. The school
17 shall pay the costs for securing the fingerprints, any criminal history record
18 information made available under this chapter, and for the nationwide criminal
19 history record check. This subdivision does not apply to the highway patrol law
20 enforcement training center and enrollees who have a limited license under
21 section 12-63-09.
- 22 j. The North Dakota public employees retirement board for individuals first
23 employed by the public employees retirement board after July 31, 2005, who
24 have unescorted physical access to the office or any security-sensitive area of
25 the office as designated by the executive director.
- 26 k. The executive director of the retirement and investment office for individuals first
27 employed by the retirement and investment office after July 31, 2005, who have
28 unescorted physical access to the office or any security-sensitive area of the
29 office as designated by the executive director.
- 30 l. The Bank of North Dakota for a final applicant for a specified occupation with the
31 Bank as designated by the president.

- 1 m. Job service North Dakota for all employees, final applicants for employment with
2 job service, and contractors with access to federal tax information.
- 3 n. The department of health and human services for a final applicant for a job
4 opening or a current employee with the department as designated by the state
5 health officer; an individual being investigated by the department; or, when
6 requested by the department, an applicant for registration as a designated
7 caregiver or a compassion center agent under chapter 19-24.1.
- 8 o. The state board of nursing for applicants, licensees, registrants, or disciplinary
9 investigations under chapter 43-12.1, except that criminal history record checks
10 need not be made unless required by the board.
- 11 p. The state board of pharmacy for applicants or disciplinary investigations under
12 chapter 43-15 and registrations, or revocation or suspension of registrations,
13 under chapter 19-03.1, except that criminal history record checks need not be
14 made unless required by the board.
- 15 q. The state real estate commission for applicants, licensees, or investigations
16 under chapter 43-23, except that criminal history record checks need not be
17 made unless required by the commission.
- 18 r. The North Dakota board of social work examiners for applicants for initial
19 licensure or licensees under chapter 43-41, except that criminal history record
20 checks for licensees need not be made unless required by the board.
- 21 s. All agencies, departments, bureaus, boards, commissions, or institutions of the
22 state, including the North Dakota university system, for all employees or final
23 applicants for employment as a security guard or to otherwise provide security.
- 24 t. The office of management and budget for each individual who has access to
25 personal information as designated by the director.
- 26 u. The department of corrections and rehabilitation for all agents and employees
27 and a final applicant for employment designated by the director and for each
28 agent, employee, or a final applicant for employment of a privately operated
29 entity providing contract correctional services for the department who exercises
30 direct authority over juveniles, inmates, probationers, or parolees.

- 1 v. A city, county, or combination of cities or counties that operates a correctional
2 facility subject to chapter 12-44.1, for each agent and employee and a final
3 applicant for employment of the correctional facility who has direct contact with or
4 exercises direct authority over any juvenile or inmate of the correctional facility,
5 and for each agent, employee, or a final applicant for employment of a privately
6 operated entity providing contract correctional services for the correctional facility
7 who exercises direct authority over juveniles, inmates, probationers, or parolees.
- 8 w. The North Dakota university system for a final applicant for or employee in a
9 specified position in the university system or a university system institution or for
10 each student applying for or admitted to a specified program of study, as
11 designated by the chancellor.
- 12 x. (1) The board of a school district, for employees designated by the board,
13 provided the board is responsible for paying the costs associated with
14 obtaining a criminal history record check;
- 15 (2) The board of a multidistrict special education unit, for employees designated
16 by the board, provided the board is responsible for paying the costs
17 associated with obtaining a criminal history record check;
- 18 (3) The board of an area career and technology center, for employees
19 designated by the board, provided the board is responsible for paying the
20 costs associated with obtaining a criminal history record check;
- 21 (4) The board of a regional education association, for employees designated by
22 the board, provided the board is responsible for paying the costs associated
23 with obtaining a criminal history record check; and
- 24 (5) The superintendent of public instruction in the case of a nonpublic school or
25 a state school with a superintendent appointed by or reporting to the
26 superintendent of public instruction, for employees designated by the
27 nonpublic or state school, provided the nonpublic or state school is
28 responsible for paying the costs associated with obtaining a criminal history
29 record check.
- 30 y. (1) The board of a school district, for a final applicant seeking employment with
31 the district or otherwise providing services to the district, if that individual

- 1 has unsupervised contact with students, provided the board is responsible
2 for paying the costs associated with obtaining a criminal history record
3 check;
- 4 (2) The board of a multidistrict special education unit, for a final applicant
5 seeking employment with the unit or otherwise providing services to the unit,
6 if that individual has unsupervised contact with students, provided the board
7 is responsible for paying the costs associated with obtaining a criminal
8 history record check;
- 9 (3) The board of an area career and technology center, for a final applicant
10 seeking employment with the center or otherwise providing services to the
11 center, if that individual has unsupervised contact with students, provided
12 the board is responsible for paying the costs associated with obtaining a
13 criminal history record check;
- 14 (4) The board of a regional education association, for a final applicant seeking
15 employment with the association or otherwise providing services to the
16 association if that individual has unsupervised contact with students,
17 provided the board is responsible for paying the costs associated with
18 obtaining a criminal history record check; and
- 19 (5) The superintendent of public instruction in the case of a nonpublic school or
20 a state school with a superintendent appointed by or reporting to the
21 superintendent of public instruction, for a final applicant seeking
22 employment with the school or otherwise providing services to the school, if
23 that individual has unsupervised contact with students, provided the board is
24 responsible for paying the costs associated with obtaining a criminal history
25 record check.
- 26 (6) For purposes of this subdivision, "unsupervised contact" with students
27 means being in proximity to one or more students, on school grounds or at
28 school functions, outside the presence of an individual who has been
29 subject to a criminal history record check.

- 1 z. The racing commission for applicants for licenses under chapter 53-06.2, except
2 that criminal history record checks need not be made unless required by the
3 commission.
- 4 aa. A district court for a petition to change a name under chapter 32-28.
- 5 bb. The state board of pharmacy for a wholesale drug distributor seeking licensure
6 under chapter 43-15.3.
- 7 cc. The board of dental examiners for investigations of applicants or dentists under
8 section 43-28-11.2, except that criminal history record checks need not be made
9 unless required by the board.
- 10 dd. The department of financial institutions for each applicant for a specified
11 occupation with the department as specified by the commissioner and principal
12 owners and managing officers of applicants for a license from the department of
13 financial institutions.
- 14 ee. The office of tax commissioner for all employees, final applicants for employment
15 with the tax commissioner, and contractors with access to federal tax information.
- 16 ff. The state board of examiners for nursing home administrators for applicants for
17 licensure or licensees under chapter 43-34, except that criminal history record
18 checks for licensees need not be made unless required by the board.
- 19 gg. The marriage and family therapy licensure board for applicants, licensees, or
20 investigations under chapter 43-53, except that criminal history record checks
21 need not be made unless required by the board.
- 22 hh. The state board of chiropractic examiners for applicants, licensees, certificates,
23 or investigations under chapter 43-06, except that criminal history record checks
24 need not be made unless required by the board.
- 25 ii. Workforce safety and insurance for a final applicant for a specified occupation
26 with workforce safety and insurance as designated by the director, or for
27 contractors who may have access to confidential information as designated by
28 the director.
- 29 jj. The board of counselor examiners for applicants for licensure or licensees under
30 chapter 43-47, except that criminal history record checks for licensees need not
31 be made unless required by the board.

- 1 kk. The state board of respiratory care for applicants, licensees, or investigations
2 under chapter 43-42, except that criminal history record checks need not be
3 made unless required by the board.
- 4 ll. The North Dakota real estate appraiser qualifications and ethics board for
5 applicants for permits or registration or permittees, registrants, owners, or
6 controlling persons under chapters 43-23.3 and 43-23.5, except that criminal
7 history record checks for permittees, registrants, owners, or controlling persons
8 need not be made unless required by the board.
- 9 mm. The insurance department for criminal history record checks authorized under
10 chapters 26.1-26 and 26.1-26.8.
- 11 nn. The office of the adjutant general for employees and volunteers working with the
12 recruiting and retention, sexual assault, and youth programs.
- 13 oo. The parks and recreation department for volunteers and final applicants for
14 employment, as determined by the director of the parks and recreation
15 department.
- 16 pp. The North Dakota medical imaging and radiation therapy board of examiners for
17 licensure and licensees under chapter 43-62, except that criminal history record
18 checks for licensees need not be made unless required by the board.
- 19 qq. The game and fish department for volunteers and final applicants for
20 employment, as determined by the director of the game and fish department.
- 21 rr. The North Dakota board of massage for applicants, licensees, or investigations
22 under chapter 43-25.
- 23 ss. The North Dakota board of physical therapy for physical therapist and physical
24 therapist assistant applicants and for licensees under investigation, except that
25 criminal history record checks need not be made unless required by the board.
- 26 tt. The department of commerce for volunteers and employees providing services
27 through eligible organizations, as determined by the commissioner of commerce.
- 28 uu. The state court administrator for a guardian ad litem who provides direct services
29 to youth.
- 30 vv. The department of environmental quality for a final applicant for a job opening or
31 a current employee with the department; an individual being investigated by the

1 department; or, when requested by the department, an applicant for a radioactive
2 materials license under chapter 23.1-03 or a solid waste permit under chapter
3 23.1-08.

4 ww. The housing finance agency for criminal history record checks authorized under
5 section 54-17-07.13.

6 xx. The office of state treasurer for each individual who has access to federal tax
7 information.

8 yy. ~~The public service commission for initial applicant licenses under chapter~~
9 ~~51-05.1, except that criminal history record checks need not be made unless~~
10 ~~required by the public service commission.~~

11 zz. The department of health and human services for a criminal history record check
12 for a children's advocacy center as authorized under section 50-25.1-11.1.

13 ~~aaa-zz.~~ The state historical society for volunteers and final applicants for employment,
14 except that criminal history record checks need not be made unless requested by
15 the society.

16 ~~bbb-aaa.~~ The department of transportation for volunteers and final applicants for
17 employment, as determined by the director of the department of transportation.

18 ~~eee-bbb.~~ The commission on legal counsel for indigents for a volunteer or final
19 applicant for employment, as determined by the director of the commission on
20 legal counsel for indigents.

21 ~~ddd-ccc.~~ The board of dietetic practice for applications for licensure or renewal
22 under chapter 43-44, except that criminal history record checks need not be
23 made unless required by the board.

24 ~~eee-ddd.~~ The secretary of state for employees with access to personally identifying
25 information of residents or businesses of the state or with access to elections
26 systems that are critical infrastructure under section 44-04-24.

27 ~~fff-eee.~~ The department of health and human services for applicants for initial licensure
28 for emergency medical services personnel, such as emergency medical
29 technicians, advanced emergency medical technicians, and paramedics, as
30 required by subdivision d of subsection 3 of section 23-27.1-03.

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

3 **Definitions.**

4 As used in this chapter:

- 5 1. "Auctioneer" means an individual who, for compensation or valuable consideration,
6 sells or offers for sale either real or personal property at public auction as a whole or
7 partial vocation.
- 8 2. "Board" means the state board of auctioneering.
- 9 3. "Clerk" means an individual who, for compensation or valuable consideration, is
10 employed either directly or indirectly by an owner while the sale is in progress to
11 record each item offered for sale, its selling price, and the buyer's name or number; to
12 collect all proceeds of the sale; to pay all expenses connected with the sale; to
13 prepare a full closing statement of all receipts and disbursements; and to make
14 settlement thereon to parties properly entitled to settlement within a reasonable length
15 of time.
- 16 4. "Internet auction" means the selling or offering for sale real or personal property at
17 public auction exclusively via the internet.

18 **Exemptions.**

19 This chapter does not apply to:

- 20 1. Sale of an estate by an executor or an administrator.
- 21 2. Sale by a sheriff or other person under court order.
- 22 3. Sale by a public official acting in an official capacity.
- 23 4. Sale of purebred or registered livestock.
- 24 5. Sale conducted or employed by a person conducting an internet auction.
- 25 6. A single act or isolated transaction in the selling of property at auction for another.

26 **Board members - Appointment.**

- 27 1. The board consists of five members appointed by the governor for a term of three
28 years. The terms of office of the members must be arranged so no more than two
29 terms expire on the thirty-first day of December of each year. Each member shall
30 qualify by taking the oath of required civil officers and shall hold office until a

1 successor is appointed and qualified. A vacancy on the board must be filled by
2 appointment by the governor for the unexpired term.

3 2. The governor may remove a board member for good cause after giving that member a
4 written statement of the reason for removal.

5 3. Each member of the board must be a licensed auctioneer or clerk who has had at
6 least three years of practical experience in the occupation.

7 **Officers - Powers - Rulemaking.**

8 The members of the board annually shall elect a president and a secretary from the
9 members of the board. The president and secretary may administer oaths. The board may
10 adopt rules necessary to implement this chapter.

11 **Compensation.**

12 Each member of the board is entitled to receive per diem compensation for each day during
13 which the member is engaged in the performance of official duties as determined by the board
14 and mileage as provided under section 54-06-09. The compensation and expenses of all
15 members of the board must be paid from license fees and other sources of income of the board.

16 **Powers and duties.**

17 1. The board shall administer and enforce this chapter. The board shall adopt rules
18 necessary to:

19 a. Establish auctioneering and clerking standards, practices, and measures
20 necessary to protect the consignor and bidder;

21 b. Establish standards for licensure; and

22 c. Set fees for licensure which may include:

23 (1) An application fee;

24 (2) A license fee;

25 (3) A renewal fee;

26 (4) A late fee;

27 (5) Administrative fees; and

28 (6) Continuing education fees.

29 2. The board shall produce an annual list of the names and level of licensure of all
30 individuals licensed by the board and make the list available upon request.

31 3. The board may employ staff and provide for staff compensation.

1 **Refusal, suspension, or revocation of license.**

- 2 1. The board may investigate the activities of a licensee or any person that acts in such
3 capacity within the state and may refuse, suspend, or revoke licensure for:
4 a. Conviction of an offense the board determines to be of such a nature as to render
5 the licensee unfit to auctioneer or clerk;
6 b. Violation of standards or practices that render the licensee unfit to practice as an
7 auctioneer or clerk; or
8 c. Fraud or misrepresentation in obtaining a license.
9 2. A license may not be revoked or suspended except after an opportunity for hearing.
10 3. An appeal from the board's decision may be taken in accordance with chapter 28-32.

11 **Enforcement - Penalty.**

12 Any person violating this chapter is guilty of a class B misdemeanor.

13 **SECTION 3. AMENDMENT.** Section 49-07-01.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **49-07-01.1. Violation of statute, commission order, or commission rule - Assessment**
16 **of civil penalty.**

17 Any person who violates any statute, commission order, or commission rule which applies
18 to matters within the authority of the commission under chapters 8-08, 8-09, 8-10, and 24-09,
19 ~~32-25, and 51-05.1~~, titles 60 and 64, and title 49 except for chapters 49-22, 49-22.1, and 49-23,
20 in addition to any other penalty provided, is subject to a civil penalty of not to exceed five
21 thousand dollars. A violation occurring under chapter 49-23, in addition to any other penalty, is
22 subject to a civil penalty not to exceed twenty-five thousand dollars. The commission shall
23 develop policies for the assessment of penalties under chapter 49-23 which will take into
24 consideration the severity of damages and the conduct of the offender. The civil penalty may be
25 compromised by the commission. The amount of the penalty when finally determined or agreed
26 upon in compromise, if not paid, may be recovered in a civil action in the courts of this state.

27 **SECTION 4. REPEAL.** Chapter 51-05.1 of the North Dakota Century Code is repealed.

28 **SECTION 5. APPROPRIATION.** There is appropriated out of any moneys in the general
29 fund in the state treasury, not otherwise appropriated, the sum of \$5,000, or so much of the sum
30 as may be necessary, to the office of management and budget for the purpose of providing a

1 grant to the state board of auctioneering for assisting with costs associated with establishing the
2 board, for the biennium beginning July 1, 2023, and ending June 30, 2025.

3 **SECTION 6. APPLICATION.** The terms of the initial members of the board of auctioneering
4 may be for less than three years to establish staggered terms with the term of no more than two
5 members expiring in any year.