

OCCUPATIONS AND PROFESSIONS

CHAPTER 373

HOUSE BILL NO. 1028

(Legislative Management)
(Health Care Committee)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the regulation of community health workers; to amend and reenact section 23-17.3-01 and subdivision h of subsection 1 of section 23-17.3-05 of the North Dakota Century Code, relating to the regulation of home health agencies; to provide for a community health worker task force; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-17.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-17.3-01. Definitions.

In this chapter, unless the context and subject matter otherwise require:

1. "Allowed practitioner" means a physician assistant or advanced practice registered nurse.
2. "Clinical record" means a written account which covers the services the agency provides directly and those provided through arrangements with another agency which account contains pertinent past and current medical, nursing, social, and other therapeutic information, including the plan of treatment.
- ~~2-3.~~ "Department" means the department of health and human services.
- ~~3-4.~~ "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.
- ~~4-5.~~ "Home health aide" means an individual who renders personal related service under the supervision of a registered professional nurse.
- ~~5-6.~~ "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency or by others under arrangements with the agency, in the places where the recipients are presently residing. Services must include the services of a currently licensed registered professional nurse and at least one other therapeutic service and

may include additional support services. These services may only be provided with the approval of a licensed physician or an allowed practitioner.

- ~~6-7.~~ "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in North Dakota pursuant to chapter 43-12.1.
- ~~7-8.~~ "Nursing services" means those services pertaining to the preventive, curative, and restorative aspects of nursing care that are performed by or under the supervision of a registered professional nurse.
- ~~8-9.~~ "Person" means an individual, firm, partnership, association, corporation, limited liability company, or any other entity, whether organized for profit or not.
- ~~9-10.~~ "Physician" means any person currently licensed pursuant to chapter 43-17.
- ~~10-11.~~ "Registered professional nurse" means a registered nurse as defined under chapter 43-12.1.
- ~~11-12.~~ "Skilled nursing" means professional nursing services rendered by nurses licensed under chapter 43-12.1.
- ~~12-13.~~ "Supportive services" includes the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; the collection of blood and other samples for laboratory analysis; and nutritional guidance, homemaker, or companion services.
- ~~13-14.~~ "Therapeutic services" means services which include:
- a. Skilled nursing care.
 - b. Medical social services.
 - c. Home health aide services.
 - d. Physical, occupational, or speech therapy.
 - e. Respiratory therapy.

SECTION 2. AMENDMENT. Subdivision h of subsection 1 of section 23-17.3-05 of the North Dakota Century Code is amended and reenacted as follows:

- h. The agency shall maintain clinical records on all patients to serve as documentation of the medical, nursing, and therapeutic care rendered to the patient and for communication between the physician or allowed practitioner and the agency.

SECTION 3. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions.

As used in this chapter:

1. "Community health representative" means an individual trained through the Indian health service to provide community-based and medically guided health care, which may include traditional native concepts.
2. "Community health worker" means an individual certified under this chapter to provide preventative services.
3. "Department" means the department of health and human services.
4. "Preventative services" means services to prevent a disease, disability, or other health condition or the progression of a disease, disability, or other health condition which are provided to an individual:
 - a. With a chronic condition;
 - b. At risk for a chronic condition who is unable to self-manage the chronic condition; or
 - c. With a documented barrier that affects the individual's health.

Title - Prohibition.

An individual may not use the title "community health worker" unless that individual is certified as a community health worker under this chapter.

Certification.

1. The department shall establish and implement a method for certifying community health workers, including:
 - a. Community health representatives; and
 - b. Other qualified individuals.
2. In implementing this section, the department may:
 - a. Adopt rules;
 - b. Charge a fee for certification and recertification;
 - c. Contract with a third party; and
 - d. Require an applicant to meet education and experience requirements.

SECTION 4. COMMUNITY HEALTH WORKER TASK FORCE.

1. During the 2023-24 interim, the department of health and human services shall establish and provide staffing and administrative services to a community health worker task force.
2. The membership of the community health worker task force is comprised of:
 - a. One representative of the medical services division of the department of health and human services, appointed by the department of health and human services;

- b. One representative of the public health division of the department of health and human services, appointed by the department of health and human services;
 - c. One representative of the tribal nations in the state, appointed by the Indian affairs commissioner in consultation with the health director of each tribal nation placed in North Dakota;
 - d. One representative of the North Dakota state university school of public health appointed by the college of health professions;
 - e. One representative of the university of North Dakota school of medicine and health sciences center for rural health, appointed by the dean of the school of medicine and health sciences;
 - f. One representative of the hospitals in this state, appointed by the North Dakota hospital association;
 - g. One representative of the federally qualified health centers, appointed by the community healthcare association of the Dakotas; and
 - h. One representative of the emergency medical services profession, appointed by the North Dakota emergency medical services association.
3. During the 2023-24 interim, the community health worker task force, in collaboration with the department of health and human services, shall:
 - a. Develop a data-driven plan for community health worker scope of work, education and training, certification and regulation, medical assistance reimbursement, including reimbursement to a federally qualified health center, and a North Dakota community health worker collaborative.
 - b. Provide to the department of health and human services a proposal for a Medicaid state plan amendment or waiver to include community health workers.
 - c. Provide the department of health and human services proposed administrative rules for the community health worker scope of work, education and training, certification and regulation, medical assistance reimbursement, and a North Dakota community health worker collaborative.
 - d. Collaborate with existing clinical, public health, home, and community based service systems.

SECTION 5. DEPARTMENT OF HEALTH AND HUMAN SERVICES - COMMUNITY HEALTH WORKERS - MEDICAID STATE PLAN AMENDMENT.

During the 2023-25 biennium, the department of health and human services shall seek a Medicaid state plan amendment to authorize the reimbursement of certified community health workers. Upon amendment of the Medicaid state plan, the commissioner of the department of health and human services shall certify this fact to the legislative management.

SECTION 6. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - COMMUNITY HEALTH WORKER TASK FORCE. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise

appropriated, the sum of \$75,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of contracting with a third party to assist the community health worker task force with data collection, meeting facilitation, and report development for the period beginning with the effective date of this section and ending June 30, 2025.

SECTION 7. EMERGENCY. Sections 4 and 6 of this Act are declared to be an emergency measure.

Approved May 6, 2023

Filed May 9, 2023

CHAPTER 374

HOUSE BILL NO. 1221

(Representatives Heinert, Bosch, Ista, Meier, Motschenbacher, M. Ruby, Schatz)
(Senators Axtman, Clemens)

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to professional transparency for health care practitioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

As used in this chapter:

1. "Advertisement" means a communication or statement, whether printed, electronic, or oral, which names the health care practitioner in relation to the practitioner's practice, profession, or institution in which the practitioner is employed, volunteers, or otherwise provides health care services. The term includes a communication or statement on a business card, on letterhead, in a patient brochure, in electronic mail, on the internet, in an audio or video format, and any other communication or statement used in the course of business.
2. "Deceptive" or "misleading" includes an advertisement or affirmative communication or representation that misstates, falsely describes, holds out, or falsely details the health care practitioner's profession, skills, training, expertise, education, board certification, or licensure.
3. "Health care practitioner" means the following health care licensure types:
 - a. Practitioners of allopathic medicine, signified by the letters "M.D." or the words surgeon, medical doctor, or doctor of medicine, by an individual licensed to practice medicine and surgery.
 - b. Practitioners of osteopathic medicine, signified by the letters "D.O." or the words surgeon, osteopathic surgeon, osteopath, doctor of osteopathy, or doctor of osteopathic medicine.
 - c. Practitioners of nursing, signified by the letters "D.N.P.", "N.P.", "R.N.", "L.P.N.", "C.R.N.A.", or any other commonly used signifier to denote a doctorate of nursing practice, advanced practice practitioner, registered nurse, licensed practical nurse, or certified registered nurse anesthetist, respectively, as appropriate to signify the degree of licensure and degree earned from an accredited institution of higher education in the appropriate field of learning.

- d. Practitioners of podiatry, signified by the letters "D.P.M." or the words podiatrist, doctor of podiatry, podiatric surgeon, or doctor of podiatric medicine.
- e. Practitioners of chiropractic, signified by the letters "D.C." or the words chiropractor, chiropractic physician, or doctor of chiropractic.
- f. Practitioners of naturopathy, signified by the letters "N.D." or the words naturopathic doctor or doctor of naturopathy.
- g. Physician assistants, signified by the letters "P.A." or the words physician assistant.
- h. Physical therapists, signified by the letters "P.T.", "D.P.T.", "M.P.T.", or the words physical therapists.
- i. Medical assistants, signified by the letters "M.A." or the words medical assistant.
- j. Practitioners of audiology, signified by the letters "Au.D.", "Sc.D.", "Ph.D.", or the words audiologist or doctor of audiology.
- k. Psychologists, signified by the letters "Ph.D.", "Psy.D.", "Ed.D." or the word psychologist.

Requirements.

1. An advertisement for health care services which names a health care practitioner must identify the type of license held pursuant to the definitions under this chapter. The advertisement may not contain deceptive or misleading information.
2. A health care practitioner providing health care services in this state shall post conspicuously and communicate affirmatively the practitioner's specific licensure as defined under this chapter. A health care practitioner shall wear a photo identification name tag during all patient encounters which must include a recent photograph of the practitioner, the practitioner's name, and the type of license. The name tag must be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent.
3. A health care practitioner is not subject to the name tag requirement if:
 - a. The health care practitioner is working in a nonpatient care setting and does not have any direct patient care interactions;
 - b. The wearing of identification would jeopardize the health care practitioner's safety;
 - c. The health care practitioner is in an office in which the license type and names of all health care practitioners working in the office are displayed on the office door and each health care practitioner working in the office has the practitioner's license posted prominently in the office and readily visible to a patient; or
 - d. The office is an office of a solo health care practitioner, or of a single type of health care provider.

Violations and enforcement.

1. Failure to comply with this chapter constitutes a violation under this chapter.
2. A health care practitioner who violates this chapter is deemed to have engaged in unprofessional conduct, which may be grounds for disciplinary action under the licensure provisions governing the respective health care practitioner.
3. A violation of this section does not create a private right of action by a patient.
4. Notwithstanding the imposition of any penalty, a professional licensing board or other administrative agency with jurisdiction may seek an injunction or other legal means as appropriate against a person violating this chapter.

Approved April 10, 2023

Filed April 11, 2023

CHAPTER 375

SENATE BILL NO. 2320

(Senators Larsen, Larson)
(Representative Louser)

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to fees chargeable by abstracters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-01-18. Fees chargeable by abstracter - Adjustments.

1. An abstracter may charge no more than the following fees for making and certifying to an abstract:
4. a. For each entry on an abstract or continuation of an entry on an abstract, fifteeneigh teen dollars.
2. b. For a complete certification covering the records of the several county offices, one hundred fiftyeighty-five dollars.
3. c. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title and for each quarter section [64.75 hectares] or portion of a quarter section in excess of one, an additional fee of fifteeneigh teen dollars.
4. d. For a certification covering premises in more than one block in any subdivision in the same abstract of title and for the premises in each additional block in excess of one, an additional fee of fifteeneigh teen dollars.
5. e. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, and state tax liens, twelve dollars and fees charged to the abstracter by a governmental agency or governmental entity.
6. f. The fees as may be fixed by special statute.
2. Beginning January 1, 2024, and annually thereafter, the board shall determine and publish adjustments to the fees allowed under this section and section 43-01-15.1 to account for inflation. Under this subsection, in calculating an adjustment the board shall use the consumer price index for all urban consumers in the midwest region as determined by the United States department of labor, bureau of labor statistics. The board shall round the fees to the nearest whole number.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 376

SENATE BILL NO. 2061

(Workforce Development Committee)
(At the request of the Board of Accountancy)

AN ACT to create and enact a new subsection to section 43-02.2-09 of the North Dakota Century Code, relating to administrative hearings; and to amend and reenact subsection 11 of section 43-02.2-02, paragraph 2 of subdivision f of subsection 5 of section 43-02.2-03, and sections 43-02.2-04 and 43-02.2-10, of the North Dakota Century Code, relating to the practice and licensure of public accountancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 43-02.2-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Principal place of business" means the office location ~~designed~~designated by the licensee for purposes of substantial equivalence and reciprocity.

SECTION 2. AMENDMENT. Paragraph 2 of subdivision f of subsection 5 of section 43-02.2-03 of the North Dakota Century Code is amended and reenacted as follows:

- (2) Rules of procedure governing the conduct of investigations and hearings ~~by the board~~;

SECTION 3. AMENDMENT. Section 43-02.2-04 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-04. Certified public accountants.

1. The board shall grant the certificate of "certified public accountant" to any person of ~~good moral character~~ who meets the requirements of this section.
2. For the purposes of this chapter, ~~good moral character means the lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the grounds of failure to satisfy this requirement only if there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal. The board may not grant a certificate if the applicant has been convicted of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, this state, or any other state if the acts involved would have constituted a crime under the laws of this state.~~

3. The board shall grant or renew certificates to persons who make application and demonstrate that their qualifications are in accordance with the following:
 - a. The board shall issue a certificate to a holder of a certificate, license, or permit issued by another state, upon a showing that the applicant is eligible under the substantial equivalency standard set out in subsection 1 of section 43-02.2-04.1. An application under this section may be made through the NASBA qualification appraisal service.
 - b. With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in subdivision a, the board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that:
 - (1) The applicant passed the uniform CPA examinations;
 - (2) The applicant had four years of experience of the type described in subsection 14 or meets comparable requirements prescribed by the board by rule, after passing the examination upon which the applicant's certificate was based and within ten years immediately preceding the application; and
 - (3) If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection 15.
 - c. The applicant shall pay the applicable fee.
 - d. An individual who establishes that individual's principal place of business in this state must obtain a certificate under this section.
4. The board shall issue a certificate to a holder of a recognized accounting designation from a jurisdiction or organization outside of the United States, provided such jurisdiction or organization extends similar reciprocity to the certificate holders of this state, and upon a showing to the board's satisfaction that the applicant:
 - a. Meets the good-moral character requirement of subsection 2;
 - b. Meets the substantial equivalent of the education requirements of subsection 5 and the experience requirements of subsection 14 at the time of application, or at the time of the issuance of the designation by the other jurisdiction or organization met the education and experience requirements then applicable in this state;
 - e-b. Has completed examinations generally equivalent to those prescribed under subsection 6;
 - d-c. Has satisfactorily completed any additional examinations that the board prescribes; and
 - e-d. Has paid the applicable fees.

5. The education requirement for a certificate is as follows:
 - a. ~~Through December 31, 1999, a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, and an accounting concentration or equivalent as determined by board rule to be appropriate, or four years of public accounting experience on one's own account or in the office of a public accountant in active practice, or in an accounting or auditing position with the government of the United States or a state.~~
 - b. ~~After December 31, 1999, at least one hundred fifty semester hours of college education including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include an accounting concentration or equivalent as determined by board rule to be appropriate. An individual who on December 31, 1999, meets the requirements of subdivision a may obtain a certificate under subdivision a if the individual passes the examination in accordance with board rules before December 31, 2004.~~
6. The examination required to be passed as a condition for the granting of a certificate must test the applicant's knowledge of the subjects of accounting and auditing. The time for holding the examination must be fixed by the board and may be changed from time to time. The board may prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided that the board to the extent possible sees to it that the grading of the examination and the passing grade requirements are uniform with those applicable in all other states. The board may use all or any part of the uniform certified public accountant examination and advisory grading service of the American institute of certified public accountants and may contract with third parties to perform administrative services with respect to the examination it deems appropriate to assist it in performing its duties. The board may permit a candidate to take the examination if the board is satisfied that the candidate will complete the educational requirements of this section within six months after the candidate's application to take the examination. candidate has at least one hundred twenty semester hours of college education.
7. An applicant must pass the examination provided for in subsection 6, as specified by rule, in order to qualify for a certificate.
8. An applicant must be given credit for any and all sections of an examination passed in another state if such credit would have been given under then applicable requirements, if the applicant had taken the examination in this state.
9. The board may in particular cases waive or defer any of the requirements of subsections 7 and 8 regarding the circumstances under which the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
10. The board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the board by rule, for examination or re-examination.

11. A certificate of certified public accountant must be renewed each year, with renewal subject to payment of fees and any other requirements prescribed by the board.
12. The board may require examination of other related subjects as specified by rule.
13. Applicants for initial issuance or renewal of certificates under this section shall list in the applications all states and jurisdictions in which they have applied for or hold certificates or permits or other recognized accounting designation, and each holder of or applicant for a certificate under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or permit or other recognized accounting designation by another state or jurisdiction.
14. After December 31, 2000, an applicant for initial issuance of a certificate under this section shall show that the applicant has had one year of experience. This experience must include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills. This experience must be verified and must meet any other requirements prescribed by the board by rule. This experience is acceptable if it was gained through employment in government, industry, academia, or public accounting. This experience requirement does not apply to those who received a certificate from this state prior to January 1, 2000.
15. The board may require by rule, as a condition for granting and renewal of certificates under this section, that applicants show completion of continuing education meeting requirements of board rule. The continuing education rules may include provisions for exceptions and must include reasonable provision for an applicant who cannot meet the continuing education requirements due to circumstances beyond the applicant's reasonable control.
16. The board may by rule create an exception to the continuing education requirements for certificate holders who do not perform or offer to perform for the public one or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Licensees granted such an exception by the board shall place the word "inactive" adjacent to the licensee's CPA title or LPA title on any business card, letterhead or any other document or device, with the exception of the licensee's CPA or LPA certificate, on which the licensee's CPA or LPA title appears. In addition, inactive CPAs, in lieu of "inactive", may place the word "retired" adjacent to the individual's CPA title or LPA title on any business card, letterhead or any other document or device, with the exception of the individual's CPA or LPA certificate, on which the individual's CPA or LPA title appears. Nothing in this section precludes an inactive CPA, from providing the following volunteer, uncompensated services: tax preparation services, participating in a government-sponsored business mentoring program, serving on the board of directors for a nonprofit or governmental organization, or serving on a government-appointed advisory body. A licensee only may convert to inactive status if the licensee holds a license in good standing.

SECTION 4. A new subsection to section 43-02.2-09 of the North Dakota Century Code is created and enacted as follows:

A hearing regarding a disciplinary action or denial of a license must be held pursuant to chapter 28-32.

SECTION 5. AMENDMENT. Section 43-02.2-10 of the North Dakota Century Code is amended and reenacted as follows:

43-02.2-10. Enforcement procedures - Investigations.

1. If this chapter authorizes the board to revoke, deny, or suspend the certificate, license, practice privilege, or permit of any licensee or holder of a practice privilege, the individual or firm has a right to a hearing ~~before the board~~ on such contemplated disciplinary action and has a right to appeal to the courts from the decision of the board on the hearing. All of the provisions of chapter 28-32 relating to proceedings before an administrative agency are applicable to and govern the notice of hearing, the hearing, and the right of appeal from the board's decision. ~~During the investigation of any complaint or other information suggesting violations of this chapter~~
2. The board, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the board, may conduct investigations to determine whether there is reasonable basis to pursue disciplinary action against any individual or firm for the violation.
3. The board may designate a member or employee to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer may file a report with the board. The board may find grounds to pursue disciplinary action under section 43-02.2-09 upon the basis of the report or may return the report to the investigating officer for further investigation.
4. Until there has been a determination to pursue disciplinary action under section 43-02.2-09, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of the ~~pending~~ pendency of the investigation must be treated as confidential information and may not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

Approved April 21, 2023

Filed April 24, 2023

CHAPTER 377

HOUSE BILL NO. 1465

(Representatives Longmuir, Dockter, Fegley, Hatlestad, Richter, Stemen, Vigesaa)
(Senators Bekkedahl, Kannianen, Rust, Vedaa)

AN ACT to amend and reenact sections 43-03-03 and 43-03-04 and subsections 4 and 5 of section 43-03-13 of the North Dakota Century Code, relating to membership of the state board of architecture and landscape architecture; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-03-03. State board of architecture and landscape architecture - Members - Term of office - How vacancies filled.

1. The state board of architecture and landscape architecture consists of ~~three~~five members appointed by the governor for terms of six years each with their terms of office staggered so arranged ~~that no more than~~ one term and only one expires on March fourteenth of each odd-numbered year.
2. The board is composed of three architects, one landscape architect, and one public member.
3. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until that member's successor is appointed and qualified, and any vacancy occurring in the board must be filled by the governor for the unexpired term.

SECTION 2. AMENDMENT. Section 43-03-04 of the North Dakota Century Code is amended and reenacted as follows:

43-03-04. Qualifications of members of board - Removal of members.

Each professional member of the board must be a resident of this state who is an architect or landscape architect and who has been a resident of and in active practice in this state ~~as an architect~~ for not less than five years before appointment. The public member of the board must be a resident of this state for at least five years before appointment, who is not licensed under this chapter, who is not a spouse of an individual licensed under this chapter, and who is not employed by an architecture or landscape architecture firm. The governor may remove any member of the board for inefficiency or neglect of duty.

SECTION 3. AMENDMENT. Subsection 4 of section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

4. In the case of an architect, must hold either:

- a. Hold a professional degree in architecture from an accredited school of architecture and must have the required practical experience, as established by the board; or
- b. Provide evidence of education and experience that is substantially equivalent to a professional degree and practical experience, as established by the board;

SECTION 4. AMENDMENT. Subsection 5 of section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

5. In the case of a landscape architect, must hold either:
 - a. A professional degree in landscape architecture from an accredited school of landscape architecture and must have the required practical experience, as established by the board; and
 - b. Provide evidence of education and experience that is substantially equivalent to a professional degree and practical experience, as established by the board; and

SECTION 5. APPLICATION. Notwithstanding section 43-03-03, to stagger terms, the initial appointment of the new members of the state board of architecture and landscape architecture may be for terms shorter than six years.

Approved April 24, 2023

Filed April 24, 2023

CHAPTER 378

HOUSE BILL NO. 1112

(Representative M. Ruby)

AN ACT to amend and reenact section 43-04-03, subsection 5 of section 43-04-12, and section 43-04-41 of the North Dakota Century Code, relating to exemptions from regulation of barbers, barber licensure fees, and disciplinary hearings for barbers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-03 of the North Dakota Century Code is amended and reenacted as follows:

43-04-03. Exemptions.

1. The following ~~persons~~individuals, when engaged in the proper discharge of their occupational duties, are exempt from the provisions of this chapter:
 1. ~~Persons~~
 - a. Individuals authorized by the laws of this state to practice medicine and surgery.
 2. b. Commissioned medical or surgical officers of the United States army, navy, air force, or marine hospital service.
 3. c. Registered nurses.
 4. ~~Registered hairdressers and~~
 - d. Licensed cosmetologists.

The persons

2. ~~An individual exempt by subsections 1, 2, and 3 under subdivision a, b, or c of subsection 1~~ may not shave nor trim the beard nor cut the hair of any ~~person~~individual for cosmetic purposes.
3. ~~An individual exempt under this section may not advertise, hold out to the public, or represent in any manner that the individual is a barber, or violate the barber pole limitation under section 43-04-49.~~

SECTION 2. AMENDMENT. Subsection 5 of section 43-04-12 of the North Dakota Century Code is amended and reenacted as follows:

5. The board shall sponsor an educational program to carry out the purposes of protecting the public health and safety by encouraging barbershops that are clean, healthful, and sanitary with capable, skilled, professional barbers. ~~The board is directed to shall use the sum of five an amount not to exceed ten~~

dollars from each fee paid for the renewal of any barber's certificate for the purpose of ~~such~~this educational program.

SECTION 3. AMENDMENT. Section 43-04-41 of the North Dakota Century Code is amended and reenacted as follows:

43-04-41. Revocation of, suspension of, or refusal to issue certificate - Hearing.

The board may not refuse to issue, refuse to renew, suspend, or revoke any certificate of registration to practice barbering for any of the causes set forth in section 43-04-40 unless the person accused has been given a public hearing by the board. A hearing under this section must be conducted pursuant to chapter 28-32. For purposes of the hearing, section 28-32-21 applies only to the licensee. The person must be notified in writing of the charges against the person and of the time set for the hearing, which must be not less than twenty days after serving the notice. Upon the hearing of any such proceedings, the board may administer oaths and may procure by its subpoena the attendance of witnesses and the production of relevant books and papers. Any court in this state, upon application of the accused or the board, by order duly entered, may require the attendance of witnesses and the production of relevant books and papers at such hearing.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 379

SENATE BILL NO. 2207

(Senators Piepkorn, Burckhard, Sickler, Sorvaag)
(Representatives Cory, Hanson)

AN ACT to create and enact a new subsection to section 43-07-07 of the North Dakota Century Code, relating to license fees and license renewal fees for nonprofit construction contractors; and to amend and reenact section 43-07-08 of the North Dakota Century Code, relating to contractor licensing exceptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-07-07 of the North Dakota Century Code is created and enacted as follows:

A nonprofit entity that is constructing or rehabilitating a single-family dwelling that will be given to or sold below the appraised value to a low-income person, may not be charged a fee by the secretary of state for a license or renewal of license as described and required under this chapter.

SECTION 2. AMENDMENT. Section 43-07-08 of the North Dakota Century Code is amended and reenacted as follows:

43-07-08. Exceptions.

This chapter does not apply to:

1. Any authorized representative ~~or representatives~~ of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person ~~whethat~~ furnishes any fabricated or finished product, material, or article of merchandise ~~whichthat~~ is not incorporated into or attached to real property by such person so as to become affixed thereto.

Approved April 4, 2023

Filed April 5, 2023

CHAPTER 380

SENATE BILL NO. 2114

(Workforce Development Committee)
(At the request of the North Dakota Board of Nursing)

AN ACT to amend and reenact sections 43-12.1-02 and 43-12.1-08 of the North Dakota Century Code, relating to the establishment of an alternative to discipline program for nurses licensed in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions.

In this chapter, unless the context otherwise requires:

1. "Advanced practice registered nurse" means an individual who holds a current license to practice in this state as an advanced practice registered nurse within one of the roles of certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or certified clinical nurse specialist, and who functions in one of the population foci as approved by the board.
2. "Alternative to discipline" means a voluntary alternative to traditional discipline program designed for nurses with substance use disorders, behavioral health conditions, or medical health conditions.
3. "Board" means the North Dakota board of nursing.
- ~~3.4.~~ "Licensed practical nurse" means an individual who holds a current license to practice in this state as a licensed practical nurse and who practices independently under the supervision of a registered nurse, specialty practice registered nurse, advanced practice registered nurse, or licensed practitioner.
- 4.5. "Nurse" means an individual who is currently licensed as an advanced practice registered nurse, specialty practice registered nurse, registered nurse, or licensed practical nurse.
- 5.6. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
 - a. The maintenance of health and prevention of illness.
 - b. Assessing and diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding

and referral of individuals who are ill, injured, or experiencing changes in the normal health processes.

- d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
- e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under the laws of this state.

6-7. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.

7-8. "Registered nurse" means an individual who holds a current license to practice in this state as a registered nurse and who practices nursing independently and interdependently through the application of the nursing process.

8-9. "Specialty practice registered nurse" means an individual who holds a current license to practice in this state as a specialty practice registered nurse and who has current certification from a national certifying body in a specific area of nursing practice.

9-10. "Unlicensed assistive person" means an assistant to the nurse, who regardless of title is authorized to perform nursing interventions delegated and supervised by a nurse.

SECTION 2. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Duties of the board.

1. The board shall regulate the practice of nursing as provided in this chapter.
2. The board shall:
 - a. Enforce this chapter.
 - b. Adopt and enforce administrative rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing organizations and other affected parties.
 - c. Appoint and employ a registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
 - d. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
 - e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.

- f. Issue and renew limited licenses or registrations to individuals requiring accommodation to practice nursing or assist in the practice of nursing.
- g. ~~Establish a nursing student loan program funded by license fees to encourage individuals to enter and advance in the nursing profession.~~ Conduct and support projects pertaining to funding assistance for nurse or student participation in nursing education.
- h. Establish a registry of individuals licensed or registered by the board.
- i. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
- j. Conduct and support projects pertaining to nursing education and practice.
- k. ~~Adopt and enforce administrative rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.~~
- l. License qualified applicants for nurse licensure.
- ~~m.~~ l. Register qualified applicants for the unlicensed assistive person registry.
- ~~n.~~ m. Adopt and enforce rules for continuing competence of licensees and registrants.
- ~~o.~~ n. Adopt and enforce rules for nursing practices.
- ~~p.~~ o. Issue practice statements regarding the interpretation and application of this chapter.
- ~~q.~~ p. Adopt and enforce rules to establish an alternative to discipline program. Records of an alternative to discipline program, including the identity of a nurse participating in the alternative to discipline program, are exempt records under section 44-04-17.1. Records of an alternative to discipline program may be disclosed by the board when disclosure of the records is necessary to protect the health, safety, and welfare of the public, when ordered by a court of competent jurisdiction, and as otherwise determined by the board at the discretion of the board.

Approved March 23, 2023

Filed March 23, 2023

CHAPTER 381

SENATE BILL NO. 2344

(Senator K. Roers)

AN ACT to amend and reenact section 43-12.3-06 of the North Dakota Century Code, relating to the health care professional student loan repayment program; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹¹ **SECTION 1. AMENDMENT.** Section 43-12.3-06 of the North Dakota Century Code is amended and reenacted as follows:

43-12.3-06. Student loan repayment program - Contract.

1. The health council shall enter a contract with a selected health care professional. The health council shall agree to provide student loan repayments on behalf of the selected health care professional subject to the requirements and limitations of this section.
 - a. For a physician:
 - (1) The loan repayment may not exceed twenty thousand dollars per year, and may not exceed one hundred thousand dollars over five years; and
 - (2) The matching funds must equal fifty percent of the amount required in paragraph 1.
 - b. For a clinical psychologist:
 - (1) The loan repayment may not exceed twelve thousand dollars per year, and may not exceed sixty thousand dollars over five years; and
 - (2) The matching funds must equal twenty-five percent of the amount required in paragraph 1.
 - c. For an advanced practice registered nurse, registered nurse, or a physician assistant:
 - (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
 - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
 - d. For a behavioral health professional:

²¹¹ Section 43-12.3-06 was also amended by section 84 of House Bill No. 1165, chapter 229.

- (1) The loan repayment may not exceed four thousand dollars per year, and may not exceed twenty thousand dollars over five years; and
 - (2) The matching funds must equal ten percent of the amount required in paragraph 1.
- e. For purposes of this section, a behavioral health professional means an individual who practices in the behavioral health field and is:
- (1) A licensed addiction counselor;
 - (2) A licensed professional counselor;
 - (3) A licensed social worker;
 - (4) A registered nurse;
 - (5) A specialty practice registered nurse; or
 - (6) A licensed behavior analyst.
2. a. Payments under this section must be made on behalf of the health care professional directly to the Bank of North Dakota or to another participating lending institution.
- b. Except as otherwise provided, payments under this section may be made only at the conclusion of each ~~twelve-month~~twelve-month period of service.
- c. Prorated payments may be made only if:
- (1) The repayment of the loan requires less than a full annual payment;
 - (2) The health care professional is terminated or resigns from his or her position; or
 - (3) The health care professional is unable to complete a twelve-month period of service due to the individual's death, a certifiable medical condition or disability, or a call to military service.
3. Payments under this section terminate upon the earlier of:
- a. The full repayment of the health care professional's student loan; or
 - b. The completion of five years as a participant in the student loan repayment program.
4. The health council shall waive the requirements of this section ~~that~~which pertain to matching funds if the health care professional opens a new practice as a solo practitioner in a city that has fewer than fifteen thousand residents.

SECTION 2. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES - HEALTH CARE PROFESSIONAL STUDENT LOAN REPAYMENT PROGRAM. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$48,000, or so much of the sum as may be necessary, to the department of health and human services for the purpose of

funding four slots for registered nurses under the health care professional student loan repayment program, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Approved April 26, 2023

Filed April 26, 2023

CHAPTER 382

SENATE BILL NO. 2115

(Workforce Development Committee)
(At the request of the North Dakota Board of Medicine)

AN ACT to create and enact section 43-17-02.5, two new subsections to section 43-17-07.1, section 43-17-27.2, and a new subsection to section 43-17-41 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; to amend and reenact sections 43-17-01, 43-17-02, 43-17-02.1, 43-17-02.2, 43-17-02.3, 43-17-03, 43-17-04, 43-17-05, 43-17-06, 43-17-07, 43-17-11, 43-17-14, 43-17-18, 43-17-24, 43-17-25, 43-17-26.1, 43-17-27.1, 43-17-31, 43-17-32.1, 43-17-37, 43-17-38, 43-17-43, 43-17-46, 43-17.1-01, 43-17.1-02, 43-17.1-05, 43-17.1-05.1, 43-17.1-06, and 43-17.1-08 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants; and to repeal sections 43-17-21 and 43-17-30 of the North Dakota Century Code, relating to licensing and discipline of physicians and physician assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means a physician, resident physician, or physician assistant licensed to practice in North Dakota.
3. "Physician" includes physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).
4. "Physician assistant" means an individual issued a physician assistant license under this chapter.
5. "Practice of medicine" includes the practice of medicine, surgery, and obstetrics. The following persons are regarded as practicing medicine:
 - a. A person that holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
 - b. A person that suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any individual, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
 - c. A person that maintains an office for the examination or treatment of individuals afflicted with disease or injury of the body or mind.

- d. A person that attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings shall be held to be engaged in the practice of medicine.
6. "Resident physician" means an individual issued a postgraduate training license under this chapter.
7. "Telemedicine" means the practice of medicine using electronic communication, information technologies, or other means between a licensee in one location and a patient in another location, with or without an intervening health care provider. "Telemedicine" includes direct interactive patient encounters, asynchronous store-and-forward technologies, and remote monitoring.

SECTION 2. AMENDMENT. Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02. Persons exempt from the provisions of chapter.

The provisions of this chapter do not apply to the following:

1. ~~Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education, provided that the North Dakota board of medicine may adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such persons.~~
2. The domestic administration of family remedies.
3. ~~2.~~ Dentists practicing their profession when properly licensed.
4. ~~3.~~ Optometrists practicing their profession when properly licensed.
5. ~~4.~~ The practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if the person does not hold out to be a physician or surgeon.
6. ~~5.~~ Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
7. ~~6.~~ Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
8. ~~7.~~ Podiatrists practicing their profession when properly licensed.

- ~~9.~~ An individual rendering services as a physician assistant. However, sections 43-17-02.1 and 43-17-02.2 apply to physician assistants. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by persons licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
- ~~10-8.~~ A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.
- ~~11-9.~~ A naturopath duly licensed to practice in this state pursuant to the statutes regulating such profession.
- ~~12-10.~~ An individual duly licensed to practice medical imaging or radiation therapy in this state under chapter 43-62.
- ~~13-11.~~ An acupuncturist duly licensed to practice in this state pursuant to the statutes regulating such profession.

SECTION 3. AMENDMENT. Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.1. Physician assistant - Scope of practice.

1. An individual providing services of a physician assistant as outlined in this chapter to a patient located in the state shall possess an active North Dakota license for physician assistant practice. The board shall adopt rules governing the conduct, licensure, fees, qualifications, and discipline of physician assistants. Physician assistants are not authorized to perform any services that must be performed by individuals licensed pursuant to chapters 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.
2. A physician assistant may:
 - a. Provide a legal medical service for which a physician assistant is prepared by education, training, and experience and is competent to perform, including:
 - (1) Obtaining and performing a comprehensive health history and physical examination;
 - (2) Evaluating, diagnosing, managing, and providing medical treatment;
 - (3) Ordering and evaluating a diagnostic study and therapeutic procedure;
 - (4) Performing a diagnostic study or therapeutic procedure not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01;

- (5) Performing limited sonography on a focused imaging target to assess specific and limited information about a patient's medical condition or to provide real-time visual guidance for another procedure;
 - (6) Educating a patient on health promotion and disease prevention;
 - (7) Providing consultation upon request; and
 - (8) Writing a medical order;
- b. Obtain informed consent;
 - c. Supervise, delegate, and assign therapeutic and diagnostic measures not involving the use of medical imaging as defined in section 43-62-01 or radiation therapy as defined in section 43-62-01 to licensed or unlicensed personnel;
 - d. Certify the health or disability of a patient as required by any local, state, or federal program;
 - e. Authenticate any document with the signature, certification, stamp, verification, affidavit, or endorsement of the physician assistant if the document may be authenticated by the signature, certification, stamp, verification, affidavit, or endorsement of a physician; and
 - f. Pronounce death.
- 2-3. A physician assistant shall collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and competence of the physician assistant, and the standard of care. The degree of collaboration must be determined at the practice which may include decisions made by the employer, group, hospital service, and the credentialing and privileging systems of a licensed facility. A physician assistant is responsible for the care provided by that physician assistant and a written agreement relating to the items in this chapter is not required.
- 3-4. A physician assistant:
- a. May prescribe, dispense, administer, and procure drugs and medical devices;
 - b. May plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, nutrition, blood and blood products, and diagnostic support services, including home health care, hospice, and physical and occupational therapy;
 - c. May prescribe and dispense schedule II through V substances as designated by the federal drug enforcement agency and all legend drugs;
 - d. May not dispense a drug, unless pharmacy services are not reasonably available, dispensing is in the best interest of the patient, or an emergency exists;

- e. May request, receive, and sign for a professional sample, and may distribute a professional sample to a patient; and
 - f. If prescribing or dispensing a controlled substance, shall register with the federal drug enforcement administration and shall comply with appropriate state and federal laws.
- 4-5. A physician assistant shall practice at a licensed health care facility, facility with a credentialing and privileging system, physician-owned facility or practice, or facility or practice approved by the board.
- 6-6. Notwithstanding subsections 23 and 45, a physician assistant with less than four thousand hours of practice approved by the board under subsection 45 shall execute a written collaborative agreement that:
- a. Is between a physician and a physician assistant with less than four thousand hours practice;
 - b. Describes how collaboration required under subsection 23 must occur; and
 - c. Is available to the board on request.
- 6-7. A physician assistant shall comply with any privileging and credentialing systems at the facility at which the physician assistant practices.

SECTION 4. AMENDMENT. Section 43-17-02.2 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.2. Physician assistant - Use of certain words or initials prohibited.

1. ~~A person that is not a physician assistant may not:~~
 - a. ~~Represent oneself as a physician assistant or act as a physician assistant; or~~
 - b. ~~Use any combination or abbreviation of the term or title "physician assistant" or "PA" to indicate or imply the person is a physician assistant.~~
An individual not licensed as a physician or resident physician under this chapter is prohibited from using the title of "doctor of medicine", "medical doctor", "doctor of osteopathic medicine", "osteopathic physician", "physician", "M.D.", or "D.O."
2. ~~However, an individual who is not licensed as a physician assistant under this chapter but who meets the qualifications for licensure as a physician assistant under this chapter may use the title "physician assistant" or "PA" but may not act or practice as a physician assistant unless licensed under this chapter.~~
An individual not licensed as a physician assistant under this chapter is prohibited from using the title of "physician assistant" or "P.A."
3. This section may not be construed as to prohibit a licensed health care professional from using a title incorporating any of the words specified in subsection 1 or 2, or from using a title or designation that is not specifically protected by subsection 1 or 2, if the title or designation used is permitted under the health care professional's practice act.

4. Notwithstanding subsections 1 and 2, an individual who does not hold an active physician, resident physician, or physician assistant license may still use the title conferred by a qualified educational degree recognized under this chapter, but may not practice unless licensed under this chapter.

SECTION 5. AMENDMENT. Section 43-17-02.3 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.3. Practice of medicine or osteopathy by holder of permanent, unrestricted license - Exceptions.

The practice of medicine is deemed to occur in the state the patient is located. A practitioner providing medical care to a patient located in this state is subject to the licensing and disciplinary laws of this state and shall possess an active North Dakota license for the practitioner's profession. Notwithstanding anything in this chapter to the contrary, any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any state or territory of the United States, the District of Columbia, or a province of Canada may practice medicine or osteopathy in this state without first obtaining a license from the North Dakota board of medicine under one or more of the following circumstances:

1. As a member of an organ harvest team;
2. On board an air ambulance and as a part of its treatment team;
3. To provide one-time consultation on a diagnosis for a patient to a physician licensed in the state, or teaching assistance for a period of not more than seven days; or
4. To provide consultation or teaching assistance previously approved by the board for charitable organizations; or
5. Under rules adopted by the board.

SECTION 6. Section 43-17-02.5 of the North Dakota Century Code is created and enacted as follows:

43-17-02.5. Licensure for resident physicians.

Resident physicians of medicine or osteopathy who are continuing their training and performing the duties of a resident in a hospital or institution maintained and operated by the state, an agency of the federal government, or a residency program accredited by the accreditation council on graduate medical education will be required to possess an active North Dakota residency license. The board shall adopt rules relating to the licensure, fees, qualifications, activities, scope of practice, and discipline of such individuals.

²¹² **SECTION 7. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. North Dakota board of medicine - How appointed - Qualifications.

1. The governor shall appoint a North Dakota board of medicine consisting of ~~thirteen~~fourteen members; ten physicians, nine of whom are doctors of

²¹² Section 43-17-03 was also amended by section 1 of Senate Bill No. 2221, chapter 383.

medicine, one of whom is a doctor of osteopathy, ~~one~~; two of whom ~~is~~ are physician assistant, assistants; and two of whom are designated as public members. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.

2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.
 - c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. ~~The~~Each physician assistant member of the board must:
 - a. Be a practicing physician assistant of integrity and ability.
 - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
 - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. An individual appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 8. AMENDMENT. Section 43-17-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17-04. Term of office.

The term of office of each member of the board is four years and until a successor is appointed and qualified. The terms must be so arranged that no more than four terms expire on the thirty-first of July of each year. The governor shall fill all vacancies by appointment but in case of a vacancy before the expiration of a term, the appointment must be for the residue of the term only. The board, at least six months in advance of filling an expired term, shall communicate with the governor's office regarding specialty areas to be filled on the board. The governor's office shall take this information into consideration when filling vacancies. No member of the board may serve thereon for more than two successivefull terms.

SECTION 9. AMENDMENT. Section 43-17-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17-05. Removal of members of North Dakota board of medicine - Re-election.

1. The governor for good cause shown and upon the recommendation of three-fourths of the members of the North Dakota board of medicine may remove any member of such board for misconduct, incapacity, or neglect of duty.
2. If a member of the board is consistently absent from board or committee meetings, the board may declare a vacancy. Vacancies on the board must be filled by appointment by the governor.

SECTION 10. AMENDMENT. Section 43-17-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17-06. Officers of the board and executive director.

The board shall elect a president and vice president from its own number and employ an executive director to provide administrative services to the board. ~~The executive director need not be a member of the board. The executive director must be the general administrative and prosecuting officer of such board.~~

SECTION 11. AMENDMENT. Section 43-17-07 of the North Dakota Century Code is amended and reenacted as follows:

43-17-07. Meetings of the board.

The board shall hold at least three meetings in each calendar year ~~for the examination of applicants for licensure,~~ and may call such special meetings as may be necessary. The meetings must be held at such places as the board may designate.

SECTION 12. Two new subsections to section 43-17-07.1 of the North Dakota Century Code are created and enacted as follows:

Utilize board funds and resources for promotion, education, and outreach services for the professions and students of the professions licensed under this chapter.

Adopt rules to implement this chapter.

SECTION 13. AMENDMENT. Section 43-17-11 of the North Dakota Century Code is amended and reenacted as follows:

43-17-11. Records of board - License applications - Preservation.

The board shall keep a record of all of its proceedings and applications for license. ~~Application records must be preserved for at least six years beyond the disposition thereof or the last annual registration of the licensee, whichever is longer.~~ Failure of an applicant to submit a completed application within one year is grounds to discontinue processing the application, and records will be disposed of unless otherwise approved by the chairman and executive director for good cause.

SECTION 14. AMENDMENT. Section 43-17-14 of the North Dakota Century Code is amended and reenacted as follows:

43-17-14. Compensation - Expenses of board and the members thereof.

1. A member of the board shall receive for each day during which the member actually is engaged in the performance of the duties of the member's office such per diem as must be fixed by the board and such mileage as is provided in ~~section~~sections 44-08-04 and 54-06-09.
2. The executive director of the board shall receive such salary or other compensation, and such allowance for clerical and other expenses of the board as the board shall determine.
3. The board may employ staff to carry out the duties under this chapter.

SECTION 15. AMENDMENT. Section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

43-17-18. License~~Physician license~~ **requirements.**

1. General. Every applicant for licensure shall file a written application, on forms provided by the board, showing to the board's satisfaction that the applicant is ~~of good moral character~~ and satisfies all of the requirements of this chapter including:
 - a. Successful completion of a medical licensure examination satisfactory to the board;
 - b. Physical, mental, and professional capability for the practice of medicine in a manner acceptable to the board; and
 - c. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction, of the commission of any act that would constitute grounds for disciplinary action under this chapter; the board may modify this restriction for cause.
2. Graduates of United States and Canadian schools.
 - a. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant has been awarded a degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions, territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred.
 - b. An applicant who is a graduate of an approved medical or osteopathic school located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board or by an accrediting body approved by the board.
3. Graduates of international schools.
 - a. An applicant who is a graduate of a medical school not located in the United States, its possessions, territories, or Canada, shall present evidence, satisfactory to the board, that the applicant possesses the

degree of doctor of medicine or a board-approved equivalent based on satisfactory completion of educational programs acceptable to the board. Graduates of osteopathic schools located outside the United States are not eligible for licensure.

- b. An applicant who has graduated from a medical school not located in the United States, its possessions, territories, or Canada, must present evidence, satisfactory to the board, that the applicant has successfully completed ~~thirty~~twenty-four months of postgraduate training in a program located in the United States, its possessions, territories, or Canada, and accredited by a national accrediting organization approved by the board or other graduate training approved in advance by the board as meeting standards similar to those of a national accrediting organization. However, if such an applicant has not completed thirty months of postgraduate training in a program approved by the board or by an accrediting body approved by the board, but has met all other licensing requirements and has successfully completed one year of postgraduate training in the United States or Canada in a program approved by the board, and if the board finds that the applicant has other professional experience and training that is substantially equivalent to the last eighteen months of postgraduate training, then the applicant may be deemed eligible for licensure. The board is granted broad discretion in determining whether to apply this exception to the normal licensing requirements. An applicant seeking licensure under this exception must present evidence satisfactory to the board that:
 - (1) The applicant is certified by a specialty board recognized by the American board of medical specialties or by a specialty board recognized by the royal college of physicians and surgeons of Canada; or
 - (2) The applicant has passed the special purpose examination developed by the federation of state medical boards of the United States.
 - c. The applicant shall present evidence satisfactory to the board that the applicant has been awarded a certificate by the educational council for foreign medical graduates. The board may adopt rules establishing specific exceptions to this requirement.
 - d. The applicant has a working ability in the English language sufficient to communicate with patients and physicians and to engage in the practice of medicine.
4. ~~Special license. The board may grant a temporary special license to an applicant who is a graduate of a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training; has successfully completed two years of approved postgraduate training in the United States or Canada; and is enrolled in an approved postgraduate training program in this state. This special license is valid only while the licensee continues to be enrolled in an approved postgraduate training program in this state.~~Uniquely qualified license. The board may issue a medical license to an applicant who does not meet all the technical eligibility requirements if the board determines the applicant is uniquely qualified through training or experience or will make a unique or special contribution to the practice of medicine not readily available

to the citizens of the state. The board shall adopt rules for qualifications and factors to be considered under this subsection.

5. An applicant may require an interview before the board for such examination into the applicant's qualifications. The board may adopt rules to issue provisional and temporary licenses to be in effect in the interval between board meetings.

SECTION 16. AMENDMENT. Section 43-17-24 of the North Dakota Century Code is amended and reenacted as follows:

43-17-24. Physicians register/licensure with the board.

~~On or before the due date established by the board, every person legally licensed to practice medicine within this state~~

1. ~~An applicant shall file with the executive director of the board a registration statement upon blanks prepared and provided by the board~~completed application and shall pay to the executive director the ~~registration~~application fee. No person may engage in the practice of medicine in this state without a ~~current registration certificate~~license issued by the board.
2. Each licensee shall maintain a permanent electronic mail or mailing address with the board to which all communications from the board to the licensee will be sent. A licensee who changes the individual's electronic mail or mailing address shall notify the board in writing of the new contact information within sixty days.
3. If a licensee fails to notify the board in writing of the changes as required by this section after sixty days, the board may impose upon the licensee a fee not to exceed one hundred dollars and may initiate disciplinary action against the licensee.

SECTION 17. AMENDMENT. Section 43-17-25 of the North Dakota Century Code is amended and reenacted as follows:

43-17-25. RegistrationApplication fee.

~~The registration fee for any person licensed to practice medicine~~individual seeking licensure or renewal in the state must be fixed by regulation of the board. All fees must be paid to and held by the executive director of the board and are subject to disbursement by the board in performing its duties.

SECTION 18. AMENDMENT. Section 43-17-26.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-26.1. LicensePhysician license renewals - Late fees.

A physician seeking to renew ~~the annual registration~~the physician's license who has failed to complete the ~~annual registration process~~renewal application within the time specified by the North Dakota board of medicine must be assessed a fee ~~equal up~~ to three times the normal ~~annual registration~~licensure fee, in addition to such other penalties as are authorized by law, if that physician is found to have been practicing medicine in this state after the physician's license expired. A physician who is not found to have been practicing medicine in this state may renew a license upon payment of the arrearage and meeting the other requirements of the board. However, a physician whose license lapsed more than three years before that physician

petitioned the board for reinstatement must submit a new application for licensure, whether or not that physician has practiced medicine in this state since the physician's license was last current.

SECTION 19. AMENDMENT. Section 43-17-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-27.1. ContinuingPhysician continuing education requirements.

1. The board shall promote a high degree of competence in the practice of medicine by establishing rules requiring every physician licensed in the state to fulfill continuing education requirements. Compliance with these rules must be documented at such times and in such manner as is required by the board. Physicians failing to comply with continuing education requirements in the time and manner specified by rule of the board will be assessed a fee up to three times the licensure fee, in addition to such other penalties as are authorized by law.
2. Before a license may be renewed, the licensee~~physician~~ shall submit evidence to the board establishing that all continuing education requirements prescribed by the rules adopted by the board have been met.
3. The board may accept current certification, maintenance of certification, or recertification by a member of the American board of medical specialties, the American osteopathic association, or the royal college of physician and surgeons of Canada in lieu of compliance with continuing education requirements.
4. The board may exempt a physician from the requirements of this section in accordance with rules adopted by the board.
5. Notwithstanding subsection 1, if an individual fails to file a timely response, the board may determine whether the individual's failure to file a timely response to an audit constitutes an admission of noncompliance with this section and whether the individual's license should be subject to action by the board. If the board determines that the individual's failure to file a timely response is an admission of noncompliance and that the individual's license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

SECTION 20. Section 43-17-27.2 of the North Dakota Century Code is created and enacted as follows:

43-17-27.2. Record retention requirements.

1. A licensee shall retain all medical records, unless otherwise appropriately transferred to another licensee or entity, for at least seven years from the last date of service for each patient, except as otherwise required by law.
2. The board may adopt rules to implement record retention and requirements for transfer of medical records for situations in which the licensee sells the licensee's medical practice, departs from the medical practice, or upon licensee death, incapacity, or retirement.

²¹³ **SECTION 21. AMENDMENT.** Section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31. Grounds for disciplinary action.

1. Disciplinary action may be imposed against a physician upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
 - b. The making of false or misleading statements about the physician's skill or the efficacy of any medicine, treatment, or remedy.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon a person's ability to serve the public as a practitioner of medicine or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 - d. ~~Habitual use~~Use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice medicine.
 - e. Physical or mental disability materially affecting the ability to perform the duties of a physician in a competent manner.
 - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 - g. Obtaining any fee by fraud, deceit, or misrepresentation.
 - h. Aiding or abetting the practice of medicine by an unlicensed, incompetent, or impaired person.
 - i. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or its investigative panels.
 - j. The practice of medicine under a false or assumed name.
 - k. The advertising for the practice of medicine in an untrue or deceptive manner.
 - l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
 - m. The willful or negligent violation of the confidentiality between physician and patient, except as required by law.
 - n. The failure of a doctor of osteopathy to designate that person's school of practice in the professional use of that person's name by such terms as "osteopathic physician and surgeon", "doctor of osteopathy", "D.O.", or similar terms.

²¹³ Section 43-17-31 was also amended by section 10 of Senate Bill No. 2150, chapter 122.

- o. Gross negligence in the practice of medicine.
- p. Sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine.
- q. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- r. The payment or receipt, directly or indirectly, of any fee, commission, rebate, or other compensation for medical services not actually or personally rendered, or for patient referrals; this prohibition does not affect the lawful distributions of professional partnerships, corporations, limited liability companies, or associations.
- s. The failure to comply with the reporting requirements of section 43-17.1-05.1.
- t. The failure to transfer medical records to another physician or to supply copies of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.
- u. A continued pattern of inappropriate care as a physician, including unnecessary surgery.
- v. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine.
- w. The prescribing, selling, administering, distributing, or giving to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- x. The violation of any state or federal statute or regulation relating to controlled substances.
- y. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice medicine based upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- z. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- ~~aa. The failure to properly monitor a fluoroscopy technologist or an emergency medical technician.~~
- ~~bb. The failure to furnish the board or the investigative panel, their investigators, or representatives information legally requested by the board or the investigative panel.~~

ee.bb. The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 14-02.1-05.1.

ed.cc. Noncompliance with the physician health program established under chapter 43-17.3.

2. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses together with the evidence offered.

SECTION 22. AMENDMENT. Section 43-17-32.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physicianlicensee would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physicianlicensee, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physicianlicensee.
2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physicianlicensee who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The physicianlicensee is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The physicianlicensee may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.
5. Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempta confidential record as defined in section 44-04-17.1.

SECTION 23. AMENDMENT. Section 43-17-37 of the North Dakota Century Code is amended and reenacted as follows:

43-17-37. Emergency treatment by resident physicianlicensee.

Any ~~physician or surgeon~~individual licensed under the provisions of this chapter who in good faith renders in this state emergency care at the scene of the emergency is expected to render only such emergency care as in the ~~person's~~individual's judgment is at the time indicated.

SECTION 24. AMENDMENT. Section 43-17-38 of the North Dakota Century Code is amended and reenacted as follows:

43-17-38. Emergency treatment by nonresident ~~physician~~licensee.

Any ~~physician or surgeon~~individual duly licensed to practice as a ~~physician or surgeon~~ in another state of the United States who renders in this state emergency care at the scene of the emergency may only be held to the degree of care as specified in section 43-17-37, and may not be deemed to be practicing medicine within this state as contemplated by this chapter.

SECTION 25. A new subsection to section 43-17-41 of the North Dakota Century Code is created and enacted as follows:

Reports made under this section are exempt records as defined by section 44-04-17.1.

SECTION 26. AMENDMENT. Section 43-17-43 of the North Dakota Century Code is amended and reenacted as follows:

43-17-43. Topical fluoride varnish.

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

SECTION 27. AMENDMENT. Section 43-17-46 of the North Dakota Century Code is amended and reenacted as follows:

43-17-46. Payment of fees under the interstate medical licensure compact.

1. Fees levied under subsection 1 of article XIII of the interstate medical licensure compact by the interstate medical licensure compact commission to the state of North Dakota must be paid by the board through the board's funding mechanism, and the board may not request funds deposited in the general fund for the fee. A physician granted licensure through the interstate medical licensure compact who fails to complete the addendum questions within the time specified by rule of the board must be assessed a fee up to three times the normal licensure fee, in addition to such other penalties as authorized by law.
2. Notwithstanding subsection 1, if an individual fails to timely submit the addendum questionnaire required by rule of the board, the board may determine whether the individual's failure to file a timely response constitutes an admission of noncompliance with this section and whether the license should be subject to action by the board. If the board determines the individual's failure to file a timely response is an admission of noncompliance and the individual's license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

SECTION 28. AMENDMENT. Section 43-17.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of medicine.
2. "Licensee" means an individual who is under the jurisdiction of the board of medicine.
3. "Physician" means a person engaged in the practice of medicine in this state pursuant to the provisions of chapter 43-17.

SECTION 29. AMENDMENT. Section 43-17.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-02. Investigative panels of the board.

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a ~~physician or physician assistant licensee~~, the ~~president~~executive director of the board shall designate two investigative panels, each composed of six members of the board. Five members of each panel must be physician members of the board. One member of each panel must be a public member of the board. One member of each panel must be a physician assistant.
2. Each investigative panel shall select a chairman and a vice chairman from its own members ~~and a secretary who may or may not be a member of the panel and who shall keep minutes of all meetings thereof.~~
3. Each investigative panel may engage and share information with investigators, medical experts, and such other experts as the panel in its discretion determines to be necessary to accomplish its purposes. ~~The attorney general shall provide counsel to the investigative panels, but an investigative panel may employ special counsel in any proceeding wherein it decides it is advisable.~~Information shared to such entities or individuals remains confidential in the possession of the entities.
4. Cases for investigation must be assigned to each investigative panel by the ~~president~~executive director of the board.

SECTION 30. AMENDMENT. Section 43-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05. Complaints.

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any ~~physician or physician assistant licensed to practice in this state~~licensee, or to request that an investigative panel review the qualifications of any ~~physician or physician assistant licensee~~ to continue to practice in this state. Any person that, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as the panel deems necessary to determine whether any ~~physician or physician assistant licensee~~

has committed any of the grounds for disciplinary action provided for by law. Upon completion of the investigation of the investigative panel, the investigative panel shall make a finding that the investigation discloses that:

- a. There is insufficient evidence to warrant further action;
 - b. The conduct of the ~~physician or physician assistant~~licensee does not warrant further proceedings but the investigative panel determines possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the ~~physician or physician assistant~~licensee; or
 - c. The conduct of the ~~physician or physician assistant~~licensee indicates the ~~physician or physician assistant~~licensee may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.
2. If the investigative panel determines a formal hearing should be held to determine whether any ~~licensed physician or physician assistant~~licensee has committed any of the grounds for disciplinary action provided for by law, the panel shall inform the respondent ~~physician or physician assistant~~licensee involved of the specific charges to be considered by serving upon that individual a copy of a formal complaint filed with the board for disposition pursuant to the provisions of chapter 28-32. The board members who have served on the investigative panel may not participate in any proceeding before the board relating to the complaint. The complaint must be prosecuted before the board by the attorney general or one of the attorney general's assistants.
 3. If an investigative panel finds there are insufficient facts to warrant further investigation or action, the complaint must be dismissed and the matter is closed. The investigative panel shall provide written notice to the person filing the original complaint and the individual who is the subject of the complaint of the investigative panel's final action or recommendations, if any, concerning the complaint.

SECTION 31. AMENDMENT. Section 43-17.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-05.1. Reporting requirements - Penalty.

1. A ~~physician, a physician assistant~~licensee, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a ~~licensed physician or physician assistant~~licensee may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board ~~promptly~~ shall report that information in writing to the investigative panel of the board within thirty days from the date of occurrence or action. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment within thirty days.
2. In addition to the reporting requirements in subsection 1, a licensee shall report the following to the board within thirty days:

- a. A citation, charge, arrest, or conviction of any violation of law, other than minor traffic citations.
 - b. A malpractice judgment or settlement made on behalf of an individual licensee.
 - c. Discipline by a licensing board, agency, or professional association.
 - d. An action affecting or limiting privileges or credentials.
 - e. A health care facility restriction of privileges due to practice concerns or discipline for reasons relating to the licensee's clinical competence which results in a limitation, restriction, suspension, revocation, relinquishment, or nonrenewal of the licensee's privileges to avoid an investigation or other disciplinary action.
 - f. A condition that impairs the licensee's ability to practice the profession in a competent, ethical, or professional manner. If the licensee is under treatment and able to practice in a competent, ethical, and professional manner, the condition does not need to be reported. A licensee also does not need to report under this section if the licensee has a current contract with the North Dakota professional health program and is in compliance with program requirements.
3. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board.
- 3-4. A person required to report under this section that makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person that makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct.
- 4-5. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A ~~physician or physician assistant~~ licensee who violates this section is subject to ~~administrative~~ disciplinary action by the board as specified by law or by administrative rule.

SECTION 32. AMENDMENT. Section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-06. Powers of the board's investigative panels.

The board's investigative panels may:

1. Subpoena witnesses and ~~physician and hospital~~ medical or other records relating to the practice of any ~~physician or physician assistant~~ licensee under investigation. The confidentiality of the records by any other statute or law does not affect the validity of an investigative panel's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of a committee which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection.
2. Hold preliminary hearings.
3. Upon probable cause, require any ~~physician or physician assistant~~ licensee under investigation to submit to a physical, psychiatric, or competency examination or an addiction evaluation.
4. Appoint special masters to conduct preliminary hearings.
5. Employ independent investigators if necessary.
6. Hold confidential conferences with any complainant or any ~~physician or physician assistant~~ licensee with respect to any complaint.
7. File a formal complaint against any ~~licensed physician or physician assistant~~ licensee with the board.

SECTION 33. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-17.1-08. Communication to investigative panel privileged.

1. Communications to the investigative panels and their agents are privileged and confidential, and no member of the investigative panels nor any of their agents may be compelled to testify with respect thereto in any proceedings except in formal proceedings conducted before the board.
2. All records of the investigative panels, except their financial records, are confidential. Only the formal disciplinary documents issued pursuant to chapter 28-32 are considered open records, including the formal complaint, finding of facts, conclusions of law, and order. If a disciplinary action is resolved by settlement agreement, the fully executed agreement is a public record.
3. Notwithstanding the provisions of this section, if an investigative panel determines that the records of the investigative panel disclose a possible violation of state or federal criminal law, the investigative panel may provide the records to the appropriate law enforcement agency.
4. Investigative information in the possession of the board and investigatory panels which relates to licensee discipline may be disclosed to the appropriate licensing authorities within this state, the appropriate licensing authority in another state, or as permitted under chapter 43-17.4, if the receiving entity has statutory protections in place to protect the records from disclosure.

SECTION 34. REPEAL. Sections 43-17-21 and 43-17-30 of the North Dakota Century Code are repealed.

Approved March 29, 2023

Filed March 30, 2023

CHAPTER 383

SENATE BILL NO. 2221

(Senators Dwyer, Hogue, K. Roers)
(Representatives Lefor, Rohr, Weisz)

AN ACT to create and enact section 43-58-08.1 and three new sections to chapter 43-58 of the North Dakota Century Code, relating to the regulation of the practice of naturopathic medicine; to amend and reenact section 43-17-03, subsection 2 of section 43-57-01, section 43-57-03, subsection 1 of section 43-57-06, subsection 2 of section 43-57-07, section 43-57-11, subsection 2 of section 43-58-01, and sections 43-58-05, 43-58-08, and 43-58-09 of the North Dakota Century Code, relating to the regulation of the practice of naturopathic medicine; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁴ **SECTION 1. AMENDMENT.** Section 43-17-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17-03. North Dakota board of medicine - How appointed - Qualifications.

1. The governor shall appoint a North Dakota board of medicine consisting of ~~thirteen~~fifteen members, ~~ten~~ physicians, nine of whom are doctors of medicine; and one of whom is a doctor of osteopathy, ~~one of whom is a two~~ physician assistant~~assistants~~, one naturopath, and ~~two of whom are designated as public members~~. If no osteopathic physician is qualified and willing to serve, any qualified physician may be appointed in place of the osteopathic physician.
2. Each physician member must:
 - a. Be a practicing physician of integrity and ability.
 - b. Be a resident of and duly licensed to practice medicine in this state.
 - c. Be a graduate of a medical or osteopathic school of high educational requirements and standing.
 - d. Have been engaged in the active practice of the physician's profession within this state for a period of at least five years.
3. Each public member of the board must:
 - a. Be a resident of this state.
 - b. Be at least twenty-one years of age.

²¹⁴ Section 43-17-03 was also amended by section 7 of Senate Bill No. 2115, chapter 382.

- c. Not be affiliated with any group or profession that provides or regulates health care in any form.
4. The Each physician assistant member of the board must:
 - a. Be a practicing physician assistant of integrity and ability.
 - b. Be a resident of and be duly licensed to practice as a physician assistant in this state.
 - c. Have been engaged in the active practice as a physician assistant within this state for a period of at least five years.
5. The naturopath member must:
 - a. Be a practicing naturopath of integrity and ability.
 - b. Be a resident of and duly licensed to practice as a naturopath in this state.
 - c. Have been engaged in the active practice as a naturopath within this state for a period of at least five years.
6. An individual appointed to the board shall qualify by taking the oath required of civil officers.

SECTION 2. AMENDMENT. Subsection 2 of section 43-57-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Licensee" means an individual licensed by the board under this chapter and under chapter ~~43-58~~, 43-59, 43-61, or 43-64.

SECTION 3. AMENDMENT. Section 43-57-03 of the North Dakota Century Code is amended and reenacted as follows:

43-57-03. Powers and duties of board.

1. The board shall adopt rules:
 - a. To administer and enforce this chapter and chapters ~~43-58~~, 43-59, 43-61, and 43-64;
 - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
 - c. To establish any exemptions from licensure;
 - d. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
 - e. That establish educational standards for each profession regulated by the board as appropriate; and
 - f. That set fees for licensure, which may include:
 - (1) Application fee;

- (2) License fee;
 - (3) Renewal fee;
 - (4) Late fee;
 - (5) Administrative fees; and
 - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
 3. The board may employ staff and provide for staff compensation.
 4. The board shall receive all moneys collected under this chapter and chapters ~~43-58~~, 43-59, 43-61, and 43-64 and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.
 5. The board may establish continuing education requirements for license renewal.
 6. The board may adopt a code of ethics for each profession regulated by the board.
 7. The board may adopt rules allowing students to practice under licensed supervision.

SECTION 4. AMENDMENT. Subsection 1 of section 43-57-06 of the North Dakota Century Code is amended and reenacted as follows:

1. If the board determines an applicant possesses the qualifications required under this chapter and under chapter ~~43-58~~, 43-59, 43-61, or 43-64, the board shall issue a license to the applicant.

SECTION 5. AMENDMENT. Subsection 2 of section 43-57-07 of the North Dakota Century Code is amended and reenacted as follows:

2. A license issued under chapter ~~43-58~~ or 43-59 expires on December thirty-first of every odd-numbered year. A license issued under chapter 43-61 or 43-64 expires on December thirty-first of every even-numbered year.

SECTION 6. AMENDMENT. Section 43-57-11 of the North Dakota Century Code is amended and reenacted as follows:

43-57-11. Enforcement - Penalty.

A person that violates this chapter or chapter ~~43-58~~, 43-59, 43-61, or 43-64 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter or chapter ~~43-58~~, 43-59, 43-61, or 43-64 without proof of actual damages sustained by any person.

SECTION 7. AMENDMENT. Subsection 2 of section 43-58-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Board" means the ~~state~~North Dakota board of ~~integrative health care~~medicine created under chapter ~~43-57~~43-17.

SECTION 8. AMENDMENT. Section 43-58-05 of the North Dakota Century Code is amended and reenacted as follows:

43-58-05. Application for licensure.

1. An applicant for naturopathic licensure shall file an application on forms provided by the board showing to the board's satisfaction that the applicant is ~~of good moral character and~~has satisfied all of the requirements of this chapter and ~~chapter 43-57~~set by rule of the board, including:
 - a. Successful graduation of an approved naturopathic medical college;
 - b. Successful completion of an examination prescribed or endorsed by the board, such as part I and part II of the naturopathic physicians licensing examinations;
 - c. Physical, mental, and professional capability for the practice of naturopathic medicine in a manner acceptable to the board; and
 - d. A history free of any finding by the board, any other state licensure board, or any court of competent jurisdiction of the commission of any act that would constitute grounds for disciplinary action under this chapter and ~~chapter 43-57~~set by rule of the board. The board may modify this restriction for cause.
2. The application must be accompanied by the board-established license fees and application fees and by the documents, affidavits, and certificates necessary to establish that the applicant possesses the necessary qualifications.

SECTION 9. AMENDMENT. Section 43-58-08 of the North Dakota Century Code is amended and reenacted as follows:

43-58-08. Practice of naturopathic health care.

1. A naturopath may practice naturopathic medicine as a limited practice of the healing arts as exempted under section 43-17-02. A naturopath may not:
 - a. Prescribe, dispense, or administer any prescription drug without obtaining a license endorsement under this chapter;
 - b. Administer ionizing radioactive substances for therapeutic purposes;
 - c. Perform a surgical procedure; or
 - d. Claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession. A naturopath may not hold out to the public that the naturopath is a primary care provider.
2. A naturopath may prescribe and administer for preventive and therapeutic purposes a prescriptive device and the following nonprescriptive natural therapeutic substances, drugs, and therapies:

- a. Food, vitamins, minerals, dietary supplements, enzymes, botanical medicines, and homeopathic preparations;
 - b. Topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, and therapeutic devices; and
 - c. Barrier devices for contraception.
3. A naturopath:
- a. May prescribe, dispense, administer, and procure drugs and medical devices as authorized under this chapter.
 - b. May plan and initiate a therapeutic regimen of ordering and prescribing nonpharmacological interventions.
 - c. May not prescribe or dispense schedule I through V substances as designated by the federal drug enforcement administration except for testosterone and may prescribe and dispense all other legend drugs authorized by a formulary approved by the board and set forth in rule.
 - d. May not dispense a drug as authorized under this chapter unless pharmacy services are not available or if an emergency exists.
 - e. May request, receive, and sign for a professional sample of a drug authorized to be prescribed under this chapter and may distribute the sample to a patient.
 - f. If prescribing or dispensing a drug as authorized by this chapter, shall register, if appropriate, with the federal drug enforcement administration and shall comply with appropriate state and federal laws, including participating in the prescription drug monitoring program under chapter 19-03.5.
4. A naturopath may perform or order for diagnostic purposes a physical or official examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by the board.

SECTION 10. Section 43-58-08.1 of the North Dakota Century Code is created and enacted as follows:

43-58-08.1. Endorsement for prescribing authority.

1. A naturopath may not prescribe, dispense, or administer a prescription medication without first obtaining an endorsement for licensure.
2. The naturopath first must apply for a limited endorsement with the board in which the naturopath enters a written collaborative agreement with a supervising physician licensed under chapter 43-17, who will review the first one hundred prescriptions issued by the naturopath or twelve months of prescribing, whichever occurs first. The supervising physician shall possess an unencumbered license and have been prescribing and administering prescription drugs without limitation for at least five years in the state. The supervising physician shall evaluate the naturopath's ability to safely prescribe

and administer prescription drugs within the naturopath's scope of practice and to comply with federal and state laws. The written collaborative agreement must address the requirements of this subsection and be provided to the board along with the application for endorsement. The board, by rule, further shall define the terms of the supervising physician's role in reviewing the naturopath's prescribing practices.

3. A naturopath who satisfies the requirements of subsection 2 shall notify the board in writing with verification from the supervising physician that this requirement has been met. Upon verification subsection 2 has been met, and the naturopath successfully completed the pharmacology elective examination approved by the board, the board shall issue the naturopath an endorsement to prescribe independently.
4. The board may waive the requirements of section 2 and examination under section 3 if a naturopath shows the naturopath has substantial experience in prescribing prescription medications under the laws of another jurisdiction that has standards and qualifications for a naturopath to prescribe prescription medications at least equal to those required under this chapter.
5. To maintain the endorsements provided under this section, the naturopath shall obtain five hours of continuing education hours annually regarding pharmacology of testosterone and legend drugs.

SECTION 11. AMENDMENT. Section 43-58-09 of the North Dakota Century Code is amended and reenacted as follows:

43-58-09. Public health duties.

A naturopath has the same powers and duties as a licensed physician with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice established under this chapter and chapter 43-57.

SECTION 12. A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

Powers and duties of the board.

1. The board shall adopt rules:
 - a. To administer and enforce this chapter;
 - b. To specify the scope of practice, which must be consistent with the required education;
 - c. To establish any exemptions from licensure;
 - d. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
 - e. That establish appropriate educational standards;
 - f. To establish renewal requirements; and

- g. That set required fees, including:
- (1) An application fee;
 - (2) A license fee;
 - (3) A renewal fee;
 - (4) A late fee;
 - (5) Administrative fees; and
 - (6) Continued education fees.
2. The board may establish continuing education requirements for license renewal.
3. The board may adopt a code of ethics for naturopaths.
4. If the number of naturopath licensees in the state increases to at least one hundred, the board shall consider whether to introduce legislation creating an independent board to regulate the profession.

SECTION 13. A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

Discipline.

1. The board may take disciplinary action against a licensee by any of the following means:
 - a. Revocation of license;
 - b. Suspension of license;
 - c. Probation;
 - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
 - e. Letter of censure;
 - f. Require the licensee to provide free public or charitable service for a defined period; and
 - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action.
2. The board may impose disciplinary action against a licensee upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.

- b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
- c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
- d. The use of alcohol or drugs to such a degree as to interfere with the licensee's ability to safely practice.
- e. The presence of a physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
- f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
- g. Obtaining any fee by fraud, deceit, or misrepresentation.
- h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired individual.
- i. The violation of any provision of this chapter or the rules of the board, or any action, stipulation, condition, or agreement imposed by the board or the board's investigative panels.
- j. The practice of the profession under a false or assumed name.
- k. The advertising for the practice of the profession in an untrue or deceptive manner.
- l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
- m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
- n. A finding of negligence in the practice of the profession.
- o. A finding of abuse, misconduct, or exploitation related to the licensee's practice of the profession.
- p. A continued pattern of inappropriate care.
- q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.
- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.
- s. The representation of oneself to be a physician.

- t. The prescription, sale, administration, distribution, or gift of any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes.
- u. The use of any false, fraudulent, or deceptive statement in any document connected with the performance of the licensee's duties.
- v. The prescribing, selling, administering, distributing, or giving to the naturopath or to the naturopath's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- w. The violation of any state or federal statute or regulation relating to controlled substances.
- x. The failure to furnish the board or the investigative panels or the board's or investigative panel's investigators or representatives, information legally requested by the board or the investigative panel.
- y. A finding of noncompliance with the physician health program established under chapter 43-17.3.

SECTION 14. A new section to chapter 43-58 of the North Dakota Century Code is created and enacted as follows:

Enforcement - Penalty.

An individual who practices naturopathic health care in this state without complying with the provisions of this chapter, and an individual who violates any of the provisions of this chapter for which another penalty is not specified, is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin a violation of this chapter without proof of actual damages sustained by any person.

Approved April 4, 2023

Filed April 5, 2023

CHAPTER 384

SENATE BILL NO. 2148

(Senators Sickler, Barta, K. Roers)
(Representative Strinden)

AN ACT to amend and reenact section 43-17-42 of the North Dakota Century Code, relating to the corporate practice of medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-42 of the North Dakota Century Code is amended and reenacted as follows:

43-17-42. Employment of physicians by hospitals —~~Employment of physicians by, nonprofit entities, and charitable trusts for hyperbaric oxygen therapy.~~

1. Notwithstanding any other provision of law, a hospital licensed under chapter 23-16, nonprofit entity, or charitable trust may employ directly or indirectly a physician if the employment relationship between the physician and hospital, nonprofit entity, or charitable trust is evidenced by a written contract. The written contract must contain language to the effect the hospital's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the hospital, nonprofit entity, or charitable trust. Under this subsection ~~a section~~ the hospital, nonprofit entity, or charitable trust is not engaged in the practice of medicine.

2. ~~Notwithstanding any other provision of law, a nonprofit entity or charitable trust may employ directly or indirectly a physician to conduct hyperbaric oxygen therapy if the employment relationship between the physician and nonprofit entity or charitable trust is evidenced by a written contract. The written contract must contain language to the effect the nonprofit entity's or charitable trust's employment relationship with the physician may not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the physician's employment relationship with the nonprofit entity or charitable trust. Under this subsection a nonprofit entity or charitable trust is not engaged in the practice of medicine.~~

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 385

SENATE BILL NO. 2098

(Workforce Development Committee)
(At the request of the North Dakota Board of Medicine)

AN ACT to amend and reenact sections 43-17.3-01, 43-17.3-02, 43-17.3-03, and 43-17.3-04, subsection 1 of section 43-17.3-05, and section 43-17.3-07 of the North Dakota Century Code, relating to the physician health program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.3-01 of the North Dakota Century Code is amended and reenacted as follows:

43-17.3-01. Definitions.

As used in this chapter:

1. "Board" means the North Dakota board of medicine.
2. "Committee or designated agency" means a committee or delegated agency of the physician health program which is composed of physicians and other professionals who have expertise in the areas of alcoholism, drug abuse, or mental illness and which is designated by the physician health program to perform any or all of the activities set forth in section 43-17.3-02 pursuant to agreement with the board.
3. "Impairment" means the presence of any physical, mental, or behavioral disorder or pattern of alcohol or substance ~~abuse~~use which interferes with a licensee's ability to engage safely in professional activities.
4. "Licensee" means a physician or other health professional under the jurisdiction of the board, and includes an applicant for licensure or regulation by the board.
5. "Participant" means an individual enrolled in the physician health program.
6. "Physician health program" or "program" means a board-sanctioned program for the detection, intervention, and monitoring of licensees with conditions that could result in impairment.
7. "Student" means an individual studying under a medical doctor program or physician assistant program in this state.
- ~~6-8.~~ "Treatment plan" means a plan of care, rehabilitation, monitoring and maintenance, followup, or aftercare services or combination of any of these services provided by an organization or by an individual authorized by the board or the physician health program to provide such services for a licensee taking part in the physician health program.

SECTION 2. AMENDMENT. Section 43-17.3-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17.3-02. Physician health program.

1. The board may enter an agreement with the physician health program for the program to undertake those functions and responsibilities specified in the agreement. The functions and responsibilities of the agreement may include any or all of the following:
 - a. Contracting with agencies or providers of diagnostic, monitoring, or treatment services;
 - b. Receiving and evaluating reports of licensees or students who may be experiencing potentially impairing conditions;
 - c. Intervening in cases in which a licensee or student is determined to be in need of treatment;
 - d. Referring licensees or students to appropriate services;
 - e. Monitoring the treatment and aftercare services provided to licensees or students;
 - f. Educating licensees, students, and the public about the functions of the program and the program's relationship to the board; and
 - g. Performing other activities as agreed upon by the board and the physician health program.
2. The board may participate, through its licensing fees or other specified funds, in the funding of the physician health program.

SECTION 3. AMENDMENT. Section 43-17.3-03 of the North Dakota Century Code is amended and reenacted as follows:

43-17.3-03. Physician health program requirements.

In consultation with the board, the physician health program shall develop procedures for:

1. Periodic reporting of statistical information regarding physician health program activity.
2. Periodic disclosure and joint review of information the board deems appropriate regarding reports received, contacts of investigations made, and the disposition of each case. Except as expressly provided under this chapter, the physician health program may not disclose any personally identifiable information about licensee participants other than board-ordered participants.
3. Immediate reporting to the board or governing institution the identity and results of any contact or investigation concerning an impaired licensee or student who is believed to constitute an imminent danger to the public or to the licensee individual.

4. Reporting a licensee to the board, or student to the appropriate governing institute, in a timely fashion, the identity and results of any contact or investigation concerning a potentially impaired licensee participant:
 - a. Who refuses to cooperate with the program;
 - b. Who refuses to submit to evaluation or treatment;
 - c. Who is not in compliance with a contractual treatment plan; or
 - d. Whose possible impairment is not substantially alleviated through treatment and:
 - (1) Who the program determines is unable to practice professionally with reasonable skill and safety by reason of illness related to the abuse of alcohol or other substances or as a result of any physical or mental condition; or
 - (2) Who may pose a threat to the health or safety of any individual.
5. Reporting to the board, in a timely fashion, the identity of any licensee participant regarding whom the program learns of the filing of any disciplinary charges or actions or violations of chapter 43-17.
6. Entering contractual agreements with each participant in the program which make clear the program procedures, the responsibilities of program participants, and the consequences of noncompliance with the program or with contractual agreements, including the program's reporting obligations to the board.
7. A policy by which a participant may obtain a second opinion review of recommendations by the program regarding assessment, monitoring, or treatment.

SECTION 4. AMENDMENT. Section 43-17.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-17.3-04. Evaluation.

If the board determines a licensee currently exhibits possible impairment, the board may direct that an evaluation of the licensee be ~~conducted~~ facilitated by the physician health program or by the committee or designated agency for the purpose of determining whether there is a current need for treatment or monitoring of the licensee to assure the licensee is able to practice safely. The physician health program shall report the findings of this evaluation to the board. ~~As a condition of application, every applicant for initial licensure or renewal of licensure shall agree to submit to such an evaluation for cause within a specified time frame, and to the release of the results of the evaluation to the board.~~

SECTION 5. AMENDMENT. Subsection 1 of section 43-17.3-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A licensee or student may voluntarily self-refer or self-report to the physician health program or the board ~~that the licensee may have~~ for a potentially impairing condition.

SECTION 6. AMENDMENT. Section 43-17.3-07 of the North Dakota Century Code is amended and reenacted as follows:

43-17.3-07. Confidentiality of records.

1. Notwithstanding section 44-04-18, except as otherwise provided in this chapter, all physician health program records containing identifying information about a licensee participant are confidential and may not be disclosed:
 - a. To any third person, unless disclosure is reasonably necessary for the accomplishment of the purposes of intervention, rehabilitation, referral assistance, or support services; or
 - b. In any legal or administrative proceeding, unless privilege or disclosure is otherwise required by law, requested by the board for formal disciplinary action, or regarding participant noncompliance with the program.
2. Except as provided under this section, a staff member handling records for administrative purposes; a person engaged by the program to perform evaluations, monitoring, or followup; and a person in attendance at any meeting of a physician health program or of a committee or designated agency may not be required to testify as to the content of any findings, committee discussion, or proceedings, unless requested by the board for a disciplinary proceeding or regarding participant noncompliance with the program.

Approved March 27, 2023

Filed March 28, 2023

CHAPTER 386

HOUSE BILL NO. 1104

(Industry, Business and Labor Committee)

(At the request of the State Board of Registration for Professional Engineers and Land Surveyors)

AN ACT to amend and reenact sections 43-19.1-02, 43-19.1-09, 43-19.1-10, 43-19.1-11, 43-19.1-14, 43-19.1-15, 43-19.1-18, 43-19.1-19, 43-19.1-20, 43-19.1-22, 43-19.1-24, 43-19.1-26, and 43-19.1-31 of the North Dakota Century Code, relating to the registration and regulation of professional engineers and land surveyors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-02. Definitions.

In this chapter unless the context otherwise requires:

1. "Board" means the state board of registration for professional engineers and land surveyors.
2. "Engineer" means a professional engineer.
3. "Engineer intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamental engineering subjects, as provided in sections 43-19.1-12 and 43-19.1-15.
4. "Engineering surveys" means all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, which include locating or laying out alignments, positions, or elevations for the construction of fixed works. The term does not include the surveying of real property for the establishment of land boundaries, rights of way, easements, and the dependent or independent surveys or resurveys of the public land survey system.
5. "Executive director" means the individual hired by the board to perform the duties outlined in this chapter or such other duties as directed by the board.
6. "Land surveyor" means an individual engaged in the practice of land surveying.
- ~~6-7.~~ "Land surveyor intern" means an individual who complies with the requirements for education, experience, and character and who has passed an examination in the fundamentals of mathematics and the basic principles of land surveying as required in this chapter and as established by the board.

7-8. "Practice of engineering and practice of professional engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects as are incidental to the practice of engineering. A person must be construed to practice or offer to practice engineering if the person practices any branch of the profession of engineering; if the person, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is an engineer and is able to practice engineering in this state if the person through the use of some other title implies that the person is an engineer or that the person is registered under this chapter; or if the person holds out as able to perform, or does perform any engineering service or work or any other service that is recognized as engineering, for a valuable consideration for others, including the public at large.

8-9. "Practice of land surveying":

- a. Means making land boundary determinations by providing or offering to provide professional services using such sciences as mathematics, geodesy, and photogrammetry and involving the making of geometric measurements and gathering related information pertaining to the physical or legal features of the earth; improvements on the earth; and improvements on the space above, on, or below the earth and providing, utilizing, or developing the same into land survey products such as graphics, data, maps, plans, reports, descriptions, or projects. As used in this subsection, professional services include acts of consultation, investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting gathered measurements and information related to any one or more of the following:
 - (1) Determining by measurement the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface;
 - (2) Determining by performing geodetic land surveys the size and shape of the earth or the position of any point on the earth;
 - (3) Locating, relocating, establishing, re-establishing, or retracing property lines or boundaries of any tract of land, road, right of way, or easement;
 - (4) Making any land survey for the division, subdivision, or consolidation of any tract of land;
 - (5) Locating or laying out alignments, positions, or elevations for the construction of fixed works;
 - (6) Determining by the use of principles of land surveying the position for any survey monument, boundary or nonboundary, or reference point

and establishing or replacing any such monument or reference point;
and

- (7) Creating, preparing, or modifying electronic or computerized or other data for the purpose of making land boundary determinations relative to the performance of the activities in paragraphs 1 through 6.

b. Includes:

- (1) Engaging in land surveying;
- (2) By verbal claim, sign, advertisement, letterhead, card, or any other way representing to a person to be a professional land surveyor;
- (3) Through the use of some other title implying to be a professional land surveyor or that the person is licensed or authorized under this chapter; and
- (4) Holding out as able to perform or performing any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

9-10. "Professional engineer" means an individual who by reason of special knowledge or use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been registered and licensed by the state board of registration for professional engineers and land surveyors.

40-11. "Professional land surveyor" means a land surveyor who complies with the requirements for education, experience, and character and who has been registered and licensed by the board.

44-12. "Responsible charge" means direct control and personal supervision of engineering or surveying work.

42-13. "Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

SECTION 2. AMENDMENT. Section 43-19.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-09. Receipts and disbursements.

The ~~secretary of~~executive director for the board shall receive and account for all moneys derived under the provisions of this chapter and shall deposit and disburse the money derived under this chapter in accordance with section 54-44-12. ~~The secretary shall give a surety bond to the state in such sum as may be required by the board. The premium on the bond is a proper and necessary expense of the board.~~ The ~~secretary~~executive director shall receive such salary as the board shall determine. The board shall employ clerical or other assistants as are necessary for the proper performance of the board's work and shall make expenditures of this fund for any purpose the board determines is reasonably necessary for the proper

performance of the board's duties under this chapter, including the expenses of the board's delegates to meetings of and membership fees to the national council of examiners for engineering and surveying and any of the organization's subdivisions. ~~Under no circumstances may the total amount of warrants issued in payment of the expenses and compensation provided for in this chapter exceed the amount of moneys collected.~~

SECTION 3. AMENDMENT. Section 43-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-10. Records and reports.

The board shall:

1. Keep a record of the board's proceedings and of all applications for registration. The record must show the name, age, and last-known address of each applicant; the date of application, the place of business of such applicant, the applicant's education, experience, and other qualifications; type of examination required; whether the applicant was rejected; whether a certificate of registration was granted; the date of the action of the board; and such other information as may be deemed necessary by the board. The record of the board is prima facie evidence of the proceeding of the board and a transcript of board proceedings which is certified by the ~~secretary~~executive director under seal is admissible as evidence with the same force and effect as if the original were produced.
2. Annually, in compliance with state law, submit a report of the board's transactions of the preceding year.

SECTION 4. AMENDMENT. Section 43-19.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-11. Roster.

A complete roster showing the names and last-known addresses of all professional engineers and land surveyors must be made available by the ~~secretary~~executive director for the board at intervals as established by board regulations. Copies of this roster must be made available to each registrant and all county auditors and city auditors and may be distributed or sold to the public.

SECTION 5. AMENDMENT. Section 43-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-14. Registration with examination - Professional engineers.

An applicant otherwise qualified must be admitted to registration as a professional engineer if the applicant has successfully passed a ~~written~~board-approved examination ~~of at least eight hours~~ in the principles and practice of engineering, as prescribed by the board, and has one of the following additional qualifications:

1. Is an engineer intern with a baccalaureate degree in engineering from an institution offering accredited programs approved by the board as being of satisfactory standing, who has a specific record of an additional four years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering.

2. Is an engineer intern with a baccalaureate degree in engineering from a program that is not accredited but is approved by the board, who has eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering.
3. Is an engineer intern with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character that indicates to the board that the applicant is competent to practice engineering, who has been approved for the fundamentals of engineering examination by the board before July 1, 2004, and who holds a valid engineer intern certificate as of January 1, 2006.
4. Is an engineer intern who meets one of the educational requirements listed in subsection 1, 2, or 5, who has been a teacher of engineering in a college or university offering an approved engineering curriculum of four years or more, and who has had a minimum of two years of nonteaching engineering experience that is of a character and grade that indicates to the board that the applicant is competent to practice engineering.
5. Is an engineer intern with a baccalaureate degree in an engineering-related program, who has at least twelve years of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering.

SECTION 6. AMENDMENT. Section 43-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-15. Additional qualifications of engineer interns.

Except in the case of an individual who filed an application before July 1, 1967, and any subsequent reapplication by such individual, an applicant otherwise qualified must be admitted to certification as an engineer intern. An engineer intern is an individual who has:

1. A baccalaureate degree in engineering from an institution that offers accredited programs approved by the board and has passed ~~the board's written~~ a board-approved examination ~~of at least eight hours~~ in the fundamentals of engineering shall be certified or enrolled as an engineer intern.
2. A baccalaureate degree in engineering from a program that is not accredited but is approved by the board, who has a specific record of at least four years of experience in engineering work of a grade and character satisfactory to the board, and who passes ~~the board's written~~ a board-approved examination ~~of at least eight hours~~ in the fundamentals of engineering.
3. A baccalaureate degree in an engineering-related program, who has a specific record of at least six years of experience in engineering work of a grade and character satisfactory to the board, and who passes ~~the board's written~~ a board-approved examination ~~of at least eight hours~~ in the fundamentals of engineering.

SECTION 7. AMENDMENT. Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-18. Registration fees.

The board shall establish registration fees for professional engineers, land surveyors, engineer interns, and land surveyor interns in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter. The registration fees may not exceed the amount of one hundred fifty dollars for a one-year period or ~~two~~three hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

SECTION 8. AMENDMENT. Section 43-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-19. Examinations.

Written examinations must be held at such times and places as the board shall determine. Examinations required on fundamental engineering or land surveying subjects may be taken at any time prescribed by the board. ~~The final professional examinations may not be taken until the applicant has completed a period of engineering or land surveying experience as provided in this chapter~~ be taken as soon as a candidate desires, without having to complete a specific amount of experience. The board shall establish the minimum passing grade on any examination. A candidate failing one examination may apply for re-examination, which may be granted upon payment of a fee established by the board. ~~Any candidate for registration having an average grade that does not meet the standards set by the board may not apply for re-examination for one year from the date of such examination.~~

SECTION 9. AMENDMENT. Section 43-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-20. Certificates.

The board shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant who in the opinion of the board has met the requirements of this chapter. Enrollment cards must be issued to those who qualify as engineer interns or land surveyor interns. Certificates of registration must carry the designation "professional engineer" or "professional land surveyor", must show the full name of the registrant without any titles, must be numbered, and must be signed by the chairman and the ~~secretary~~executive director under seal of the board. The issuance of a certificate of registration by the board is prima facie evidence the individual named on the certificate is entitled to all rights and privileges of a professional engineer or land surveyor during the term of which the certificate providing the same has not been revoked or suspended.

SECTION 10. AMENDMENT. Section 43-19.1-22 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-22. Expirations and renewals.

A certificate of registration expires on December thirty-first of the year of issuance if registration is on an annual basis and of the year after issuance if issued on a biennial basis and becomes invalid after that date unless renewed. ~~The secretary~~of executive director for the board shall notify every registrant under this chapter of the date of the expiration of the registrant's certificate of registration and the amount of fee required for its renewal. The notice must be mailed or electronically sent, if the registrant has opted in to receive electronic renewal notices, to the registrant at the

registrant's last-known address or electronic mail address at least one month in advance of the expiration of the registrant's certificate. Renewal may be effected at any time before or during the month of December by the payment of a fee as established by the board, not to exceed the fees established in section 43-19.1-18. Renewal of an expired certificate may be effected under rules adopted by the board regarding requirements for re-examination and penalty fees.

SECTION 11. AMENDMENT. Section 43-19.1-24 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-24. Code of ethics.

The board shall cause to have prepared and shall adopt a code of ethics, a copy of which must be made available to every registrant and applicant for registration under this chapter, and which must be published in the roster provided under this chapter. Such publication constitutes due notice to all registrants. The board may revise and amend this code of ethics from time to time and shall notify each registrant of such revisions or amendments. The code of ethics applies to all certificate holders, individual and certificate of commercial practice, including specialists in a particular branch of the engineering or surveying profession.

SECTION 12. AMENDMENT. Section 43-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-26. Disciplinary action - Procedure.

Any person may file charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against any individual registrant. Such charges must be in writing and must be filed with the secretary of executive director for the board. All charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within six months following the filing of charges unless the accused registrant waives this requirement. The board may resolve a disciplinary action at any time through informal disposition as provided in section 28-32-22. The matters considered at the hearing must include all charges made in the original filing, together with any related or additional matters or charges that arise in connection with the investigation of the original charges, and which are set forth in a specification of issues for the hearing. The time and place for the hearing must be fixed by the board and a copy of the charges, together with a notice of the time and place of hearing, and a specification of the issues to be considered at the hearing must be served upon the accused registrant either personally or sent by registered mail to the last-known address of the registrant at least thirty days before the date fixed for hearing. At any hearing the accused registrant has the right to appear in person or by counsel, or both; to cross-examine witnesses appearing against the accused; and to produce evidence and witnesses in defense of the accused. If the accused fails or refuses to appear, the board may proceed to hear and determine the validity of the issues set forth in the specification of issues or enter a default order under section 28-32-30. Following the hearing, the board members who did not serve on the investigative panel shall deliberate in executive session and if a majority of the board members who did not serve on the investigative panel vote in favor of sustaining all or part of the issues set forth in the specification of issues, the board shall make findings of fact and conclusions of law and shall issue the board's order and serve the findings, conclusions, and order upon the accused. In the order the board may reprimand, suspend, refuse to renew, or revoke the accused registrant's certificate of registration. Any registrant who feels aggrieved by any action of the board in denying, suspending, refusing to renew, or revoking that registrant's

certificate of registration may appeal the board's action to the district court under the procedures provided by chapter 28-32.

SECTION 13. AMENDMENT. Section 43-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-31. Violation and penalties.

Any person that practices or offers to practice engineering or land surveying in this state without being registered in accordance with the provisions of this chapter; any person using or employing the words "engineer", "engineering", "professional engineer", "surveyor", "land surveyor", "professional land surveyor", or any modification or derivative of these terms in that person's name, form of business, or activity, except as authorized in this chapter; any person presenting or attempting to use the certificate of registration or the seal of another; any person giving any false or forged evidence of any kind to the board or to any member of the board in obtaining or attempting to obtain a certificate of registration; or any person falsely impersonating any other registrant of like or different name; any person attempting to use an expired or revoked or nonexistent certificate of registration practicing or offering to practice when not qualified; any person falsely claiming that person is registered under this chapter; or any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. It is the duty of all duly constituted officers of the state, and of all political subdivisions of the state, to enforce the provisions of this chapter. In addition to any criminal penalty authorized under this section, the board may assess a civil penalty not to exceed two thousand five hundred dollars for each violation of section 43-19.1-25. The civil penalty may be imposed by a court in a civil proceeding or by the board through an administrative proceeding.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 387

HOUSE BILL NO. 1190

(Representatives Louser, Boschee, Cory, Koppelman, Mock, Steiner, VanWinkle)
(Senators Larsen, Larson)

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to real estate wholesale buyers and sellers; and to amend and reenact sections 43-23-06.1 and 43-23-07 of the North Dakota Century Code, relating to practicing as a real estate broker or salesperson.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-06.1. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person that has entered a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Customer" means a buyer, prospective buyer, seller, lessee, or lessor that is not represented by that real estate brokerage firm in a real property transaction.
5. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
6. "Dual agency" means a situation in which a real estate brokerage firm or the real estate brokerage firm's licensees owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:
 - a. When one licensee represents both the buyer and the seller in a real estate transaction; or
 - b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

"Dual agency" does not exist unless both the seller and the buyer in a real estate transaction have written agency agreements with the same real estate brokerage firm. For purposes of "dual agency" a subagency arrangement is

²¹⁵ Section 43-23-06.1 was also amended by section 21 of House Bill No. 1038, chapter 65.

not a written agency agreement.

7. "Licensee" means a real estate broker, an associate real estate broker, or a real estate salesperson who is associated with a real estate brokerage firm.
8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
9. "Real estate broker", or "broker", means any person that, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
 - a. Lists, offers, attempts, or agrees to list real estate or any interest in that real estate, or any improvements affixed on that real estate for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - d. Negotiates or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest in that real estate, or any improvements affixed on that real estate.
 - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest in that real estate, or any improvements on that real estate.
 - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in the licensee's own behalf.
 - g. Advertises or holds out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
 - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest in that real estate, or any improvements on that real estate.
 - i. Publicly markets for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
11. "Real estate salesperson" means any person that for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise of that compensation, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 69 for or on behalf of such licensed real estate broker.

SECTION 2. AMENDMENT. Section 43-23-07 of the North Dakota Century Code is amended and reenacted as follows:

43-23-07. Real estate brokers and salespersons - Exceptions.

1. The term "real estate broker" or "real estate salesperson" does not include:
 1. a. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, when the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
 2. b. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
 3. c. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
 4. d. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
 5. e. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.
 6. f. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
 7. g. Public officers while performing their duties.
2. This section does not exempt from the definition of "real estate broker" or "real estate salesperson" for consideration publicly marketing for sale an equitable interest in a contract for the purchase of real property between a property owner and a prospective purchaser.

SECTION 3. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Wholesale buyers and sellers - Disclosure.

1. As used in this section:
 - a. "Residential real property" means real property with fewer than five dwelling units.
 - b. "Wholesaler" means a person that enters an agreement to make income or profit from the transfer of or equitable interest in residential real property.
2. A wholesaler of residential real property shall disclose in writing to all parties to the agreement that the wholesaler holds an equitable interest in the property, may not be able to convey title to the property, and intends to make a profit or income from the transfer of the equitable interest.
3. Notwithstanding any other provision contained in a contract for sale of residential real property, if a wholesaler violates this section, the seller may cancel the contract for sale at any time before the close of escrow without penalty and may retain any earnest money paid by the wholesaler.
4. Notwithstanding any other provision contained in the contract for sale, if a wholesaler violates this section, the buyer may cancel the contract for sale at any time before the close of escrow without penalty and must be refunded all earnest money paid by the buyer.

Approved March 22, 2023

Filed March 23, 2023

CHAPTER 388

HOUSE BILL NO. 1107

(Industry, Business and Labor Committee)

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

AN ACT to amend and reenact sections 43-23.3-01 and 43-23.3-02, subsection 1 of section 43-23.3-03, sections 43-23.3-04 and 43-23.3-05, subsection 1 of section 43-23.3-06, and sections 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-10, 43-23.3-11, 43-23.3-13, 43-23.3-17, 43-23.3-18, and 43-23.3-23 of the North Dakota Century Code, relating to the regulation of real estate appraisers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

43-23.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

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

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

SECTION 2. AMENDMENT. Section 43-23.3-02 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-02. North Dakota real estate appraiser qualifications and ethics board.

1. The governor shall appoint the board. The board must consist of five members. One member must represent the public; one member must be a representative of the financial industry; and three members must be appraisers, at least one of which is experienced in the appraisal of agricultural property.
 - a. Each appraiser member of the board must be either a licensed or certified appraiser, but at least two of the appraiser members must be certified appraisers.
 - b. The governor shall appoint the financial industry representative from a list of qualified individuals submitted by the North Dakota bankers associations, the credit union association of the Dakotas, and the North Dakota farm credit system associations. Each of these entities may submit two names of candidates to the governor. The public member of the board may not be engaged in the practice of real estate appraising.
2. The term of each member is five years. A member may not serve more than two consecutive five-year terms, after which at least two years must pass before the governor may reappoint that former member to the board. The governor shall appoint members so the terms of no more than two members expire each year. A member of the board continues to hold office until the

appointment and qualification of a successor. The governor may remove a board member for cause.

3. ~~Annually the members shall elect a chairman from among the members. At least two of the members who are appraiser members must be present in order for a quorum to exist. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.~~
4. At least two of the members who are appraiser members must be present in order for a quorum to exist.
5. The members are entitled to receive compensation for each day actually engaged in the service of the board and actual and necessary traveling expenses at the rate allowed other state officials, paid from the fees collected by the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-23.3-03 of the North Dakota Century Code is amended and reenacted as follows:

1. The board, or the board's designated representative, shall:
 - a. Define apprentice appraiser, licensed appraiser, certified residential appraiser, and certified general appraiser; determine the type of educational experience, appraisal experience, and equivalent experience that meet the requirements of this chapter; establish application procedures; and establish standards for approval and disapproval of applications for permits.
 - b. ~~Establish examination specifications for each category of licensed and certified~~the apprentice and supervisory appraiser and administer examinations.
 - c. Approve or disapprove applications for permits, issue ~~pocket cards and~~ permits to practice, and maintain a registry of the names and addresses of individuals holding permits.
 - d. Discipline permittees.
 - e. Hold meetings, hearings, and examinations in places and at times as the board designates and maintain records of board activities.
 - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.
 - g. Adopt rules that clearly and concisely establish the standards for approval and disapproval of applications for permits. The rules must include a requirement that an application disapproval clearly specify the basis for the disapproval.
 - h. Keep permittees informed of board activities, including providing notification of board member terms and any upcoming board vacancy; internet posting of meeting notices and minutes; and internet posting of proposed and final rule changes.

SECTION 4. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions.

1. Except as provided in this section, a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as an apprentice, licensed, or certified appraiser without first obtaining a permit as provided in this chapter.
2. An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a temporary permit under section 43-23.3-11 or a permit under section 43-23.3-04.1.
3. This chapter does not apply to a licensed real estate broker or salesperson who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal.
4. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.
5. This chapter does not apply to a person employed by the Bank of North Dakota when providing evaluations or reviews of appraisals for federally insured depository institutions under federal financial institution regulatory agency appraisal exemptions.

SECTION 5. AMENDMENT. Section 43-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-05. Permit process.

An individual who desires to engage in the practice of real estate appraisal shall apply for a permit ~~on forms prescribed by~~with the board and submit the required fee.

SECTION 6. AMENDMENT. Subsection 1 of section 43-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

1. An apprentice appraiser must meet the minimum requirements established by the board for a permit. An apprentice appraiser may only assist ~~a licensed or a certified appraiser~~ in the performance of an appraisal assignment.

SECTION 7. AMENDMENT. Section 43-23.3-07 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-07. Examination requirement.

The board shall issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who has ~~demonstrated the following qualifications through a written examination process:~~

1. ~~Knowledge of technical terms used in or related to real estate appraising, appraisal report writing, and economic concepts relating to real estate.~~

2. ~~Understanding of the principles of land economics, appraisal processes, and of problems likely to be encountered in gathering, interpreting, and processing of data in carrying out appraisal disciplines.~~
3. ~~Understanding of the uniform standards of professional appraisal practices.~~
4. ~~Knowledge of theories of depreciation, cost estimating, methods of capitalization, the mathematics of real estate appraisal, and other principles and procedures determined by the board to be appropriate for the appreciable classification of permit.~~
5. ~~Basic understanding of real estate law.~~
6. ~~Understanding of the types of misconduct for which disciplinary proceedings may be initiated against an appraiser~~successfully completed the appropriate national examination as required by the appraisal foundation appraisal qualification board criteria.

SECTION 8. AMENDMENT. Section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-08. ~~Application prerequisites~~Appraisal education requirements.

An applicant for a permit as an apprentice, licensed, certified residential, or certified general appraiser ~~must~~shall successfully complete the education requirements established by the board.

SECTION 9. AMENDMENT. Section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-09. Appraisal experience requirements.

The board may issue a permit to practice as a licensed, certified residential, or certified general appraiser to an individual who possesses the minimum experience requirements established by the board. ~~The board shall require an applicant to furnish, under oath, a detailed listing of the appraisal reports or file memoranda for which appraisal experience is claimed by the applicant. Upon request, the applicant shall provide to the board copies of appraisal reports or other documents that the applicant has assisted in preparing.~~

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

43-23.3-10. Expiration of permit.

Permits expire biennially on December thirty-first of each year. The expiration date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

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

43-23.3-11. Temporary permit.

1. The board may issue a temporary permit to an applicant who is ~~apprenticed,~~ licensed, or certified in good standing by another state. The board may deny a temporary permit to an applicant whose permit, apprenticeship, license, or

certification was revoked, suspended, or otherwise subjected to discipline by any state or jurisdiction.

2. ~~An applicant for a temporary permit shall file with the board a designation in writing which appoints the chairman of the board to act as the applicant's licensed agent upon whom all judicial and other process or legal notices directed to the applicant may be served. Copies of the appointment, certified by the chairman of the board, may be received in evidence in any proceeding and must be given the same effect as the original. In the written designation, the applicant shall agree that any lawful process against that individual which is served upon the agent is of the same legal force as if served upon the applicant, and that the authority of the agent continues in force as long as any liability of the applicant remains outstanding in this state. Upon the receipt of any process or notice, the chairman shall mail a copy of the process or notice by certified mail, return receipt requested, to the last known business address of the applicant.~~
3. The board may issue a temporary permit to an applicant if the applicant agrees in writing to abide by this chapter and to submit to the jurisdiction of the board.
- 4.3. The board shall issue a temporary permit to an applicant who has complied with this section. The board may require the applicant to pay a fee. The board shall determine the amount of the fee and the duration of the temporary permit.

SECTION 12. AMENDMENT. Section 43-23.3-13 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-13. Principal place of business.

A permittee shall notify the board of the address of the permittee's place of business. Within twenty days of a change in the address of the place of business, the permittee shall give written notification of the change to the board and ~~pay the change of address fee.~~

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

43-23.3-17. Retention of records.

~~An apprentice, licensed, or certified appraiser shall retain, for at least five years, originals or copies of all written contracts engaging the permittee's services for appraisal work and all reports and supporting data assembled and formulated by the permittee in preparing the reports. The period for retention of records applies to each engagement of the services of the permittee and commences upon the date of the submission of the appraisal to the client unless, within that period, the permittee is notified that the appraisal report is involved in litigation, in which event the period for the retention of records commences on the date of the final disposition of the litigation. The permittee shall make available for inspection and copying by the board on reasonable notice all records required to be maintained comply with the recordkeeping rule as specified in the uniform standards of professional appraisal practice.~~

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

43-23.3-18. Standards of professional appraisal practice.

An apprentice, licensed, or certified appraiser shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal standards board of the appraisal foundation.

SECTION 15. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties.

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

Approved April 11, 2023

Filed April 12, 2023

CHAPTER 389

HOUSE BILL NO. 1128

(Representatives Hatlestad, Longmuir, Pyle, Richter, Rohr, Strinden)
(Senators Bekkedahl, Kreun)

AN ACT to amend and reenact subsection 2 of section 43-25-02, subsection 1 of section 43-25-05, subsection 1 of section 43-25-07, section 43-25-09, subsection 1 of section 43-25-10, and subsection 1 of section 43-25-18, relating to the practice and licensure of massage therapy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

2. a. "Massage" means the practice of massage therapy by the manual application of a system of structured touch to the soft tissues of the human body, including:
 - (1) Assessment, evaluation, or treatment;
 - (2) Pressure, friction, stroking, rocking, gliding, kneading, percussion, or vibration;
 - (3) Active or passive stretching of the body within the normal anatomical range of movement;
 - (4) Use of manual methods or mechanical or electrical devices or tools that mimic or enhance the action of human handstouch;
 - (5) Use of topical applications such as lubricants, scrubs, or herbal preparations; and
 - (6) Use of hot or cold applications.
- b. Except as provided in this chapter, "massage" does not include diagnosis or other services that require a license to practice medicine or surgery, osteopathic medicine, chiropractic, occupational therapy, physical therapy, or podiatry and does not include service provided by professionals who act under their state-issued professional license, certification, or registration.

SECTION 2. AMENDMENT. Subsection 1 of section 43-25-05 of the North Dakota Century Code is amended and reenacted as follows:

1. The governor shall appoint a board of massage therapy, to consist of five members.
 - a. Three members of the board must be massage therapists who are licensed in this state and annually work at least five hundred hours practicing massage in this state and have done so for at least the previous

- three years. These members must be appointed for terms of three years, staggered so that the term of one member expires each year.
- b. One member of the board must be a consumer member. To qualify as a consumer member an individual may not be or have been a massage therapist, may not have an immediate family member who is a massage therapist, may not be an owner of or have any affiliation with a massage school, ~~may not be a current or past member of any other health care licensing entity, may not have a fiduciary obligation to a facility rendering health care services, may not have a financial interest in the rendering of health care services,~~ and may not have a direct and substantial financial interest in massage therapy. This member must be appointed for a two-year term, staggered so that the term expires with a licensed board member but not with the instructor board member.
 - c. One member of the board must be a current or former massage therapy instructor of a massage therapy program that meets the standards set by the board. This member must be appointed for a term of two years, staggered so that the term expires with a licensed board member but not with the consumer board member.
 - d. Each member of the board holds office until that member's successor is appointed and qualified. Any member ~~appointed to a term beginning after June 30, 2013,~~ may only serve for a total of six consecutive years, after which that member may not be reappointed unless a period of three years has passed since that member last served on the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-25-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Any ~~person~~individual who is eighteen years of age or more and of good moral character and temperate habits~~solder~~ is entitled to apply to the board. An applicant may receive a license from the board as a massage therapist if the applicant:
 - a. Presents a diploma or credentials issued by an approved massage therapy education program that meets the standards set by the board;
 - b. Receives a passing score on an examination approved by the board; ~~and~~
 - c. Pays the required fees, which must accompany the application to the board; ~~and~~
 - d. Meets any other requirements set by the board by rule.

SECTION 4. AMENDMENT. Section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each ~~licensee shall display the licensee's original license must be conspicuously displayed or license renewal card~~ at the licensee's place of practice.
2. Except as otherwise provided under this subsection, twenty-four hours of continuing education, or equivalent college credits, submitted every two years

is required for renewal of the license. Of the twenty-four hours, twelve hours must be classroom, hands-on hours. For the first renewal after becoming licensed in this state, a minimum of three hours of the required twenty-four hours must be ethics education. If an applicant for renewal is in good standing and has been actively practicing massage for the fifteen years immediately preceding the renewal, six hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. If an applicant for renewal is in good standing and has been actively practicing massage for the twenty-five years immediately preceding the renewal, three hours of continuing education, or equivalent college credits, submitted every two years is required for renewal of the license. The board may accept continuing education attained by remote means. No more than ~~ten hours~~ fifty percent of a licensee's renewal hours may be by remote means. To qualify as continuing education, the remote education must be board-approved for content and suitability as defined in this chapter.

- a. Licensees with odd-numbered licenses shall report required continuing education on or before February twenty-eighth of each odd-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
 - b. Licensees with even-numbered licenses shall report required continuing education on or before February twenty-eighth of each even-numbered year and pay a required renewal fee of two hundred dollars or a lesser amount established by the board.
 - c. Licensed individuals during their initial licensure period are not required to report hours of continuing education. Thereafter, the licensees shall report continuing education pursuant to subdivisions a and b.
 - d. The board may grant an individual waiver based on health issues or other good cause deemed sufficient by the board.
3. If the board reasonably believes a massage therapist or applicant has a physical or ~~mental~~ behavioral health condition jeopardizing the health of those who seek massage from the individual, the board may require the individual to have an appropriate examination by a qualified examiner approved by the board. Refusal to submit to an examination, if the refusal is not due to circumstances beyond the licensee's control, constitutes grounds for discipline under section 43-25-10. If the individual has had or has any communicable disease deemed sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the individual furnishes due proof of being physically and mentally competent and sound.
 4. A holder of an expired license may within two years from the date of its expiration have the license renewed upon payment of the required renewal fee. The board may require a new certificate of physical examination and evidence of completion of any required continued educational hours.
 5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

6. An applicant with training and credentials outside of the United States ~~must~~shall submit at the applicant's own expense qualifications, credentials, and work experience to ~~one of the following credentialing agencies for review:~~
 - a. ~~International education research foundation;~~
 - b. ~~International consultants of Delaware, inc.;~~ or
 - e. A credentialing agency approved by the board.
7. Failure to have a review completed by a credentialing agency under subsection 6 and the massage therapy application procedures indemnified by the board may result in the board denying the application. The board may accept or refuse any recommendation made by the credentialing agency.

SECTION 5. AMENDMENT. Subsection 1 of section 43-25-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The license of a massage therapist may be denied, revoked, suspended, or placed on probation for any of the following grounds:
 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.
 - d. The licensee is addicted to the habitual use of intoxicating liquors, or other legal or illegal drugs, to the extent the licensee is compromised or impaired from performing the professional duties of a massage therapist or is under the influence while assessing, treating, or seeing a client.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of gross negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee or applicant failed to submit to a physical or behavioral health examination ordered by the board under section 43-25-09.
 - h. The licensee has violated this chapter or any rule adopted by the board.

SECTION 6. AMENDMENT. Subsection 1 of section 43-25-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual who has been duly licensed in another city, county, state, territory, or jurisdiction of the United States, to practice massage, may upon paying a fee of one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination, if the applicant provides evidence satisfactory to the board the applicant:
 - a. ~~Is~~The applicant is licensed in good standing in any other city, county, state, territory, or jurisdiction of the United States;
 - b. ~~Actively~~The applicant actively practiced for at least two of the last three years;
 - c. ~~Graduated~~The applicant graduated from a school of massage or massage therapy program approved by the board which may be proven by presentation of a diploma or credentials;
 - d. ~~Passed~~The applicant passed an examination acceptable to the board; and
 - e. A massage license granted to the applicant in any other city, county, state, territory, or jurisdiction is not subject to suspension, revocation, or otherwise restricted in any manner for disciplinary purposes; and.

Approved April 6, 2023

Filed April 10, 2023

CHAPTER 390

SENATE BILL NO. 2205

(Senators K. Roers, Hogan, Lee)
(Representatives Nelson, Schreiber-Beck, Strinden)

AN ACT to create and enact a new section to chapter 43-32 and chapter 43-32.1 of the North Dakota Century Code, relating to predoctoral internships and adoption of the psychology interjurisdictional compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-32 of the North Dakota Century Code is created and enacted as follows:

Predoctoral supervised psychological internship.

The board may adopt rules and standards to establish a predoctoral supervised psychological internship program.

SECTION 2. Chapter 43-32.1 of the North Dakota Century Code is created and enacted as follows:

43-32.1-01. Psychology interjurisdictional compact.

ARTICLE I - PURPOSE

WHEREAS, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

WHEREAS, this compact is intended to regulate the day-to-day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by appropriate authority; and

WHEREAS, this compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

WHEREAS, this compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the compact, to psychologists licensed in another state;

WHEREAS, this compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety;

WHEREAS, this compact does not apply when a psychologist is licensed in both the home and receiving states; and

WHEREAS, this compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice. Consistent with these principles, this compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;
2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;
3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;
4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions and disciplinary history;
5. Promote compliance with the laws governing psychological practice in each compact state; and
6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II - DEFINITIONS

In this compact:

1. "Adverse action" means any action taken by a state psychology regulatory authority which finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record.
2. "Association of state and provincial psychology boards" means the recognized membership organization composed of state psychology regulatory authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.
3. "Authority to practice jurisdictional telepsychology" means a licensed psychologist's authority to practice telepsychology, within the limits authorized under this compact, in another compact state.
4. "Bylaws" means those bylaws established by the psychology interjurisdictional compact commission pursuant to article X for its governance, or for directing and controlling its actions and conduct.
5. "Client/patient" means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, and/or consulting services.
6. "Commissioner" means the voting representative appointed by each state psychology regulatory authority pursuant to article X.
7. "Compact state" means a state, the District of Columbia, or United States territory that has enacted this compact legislation and which has not

withdrawn pursuant to article XIII, subsection 3 or been terminated pursuant to article XII, subsection 2.

8. "Confidentiality" means the principle that data or information is not made available or disclosed to unauthorized persons or processes.
9. "Coordinated licensure information system" also referred to as "coordinated database" means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized, membership organization composed of state and provincial psychology regulatory authorities.
10. "Day" means any part of a day in which psychological work is performed.
11. "Distant state" means the compact state where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.
12. "E.passport" means a certificate issued by the association of state and provincial psychology boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.
13. "Executive board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
14. "Home state" means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.
15. "Identity history summary" means a summary of information retained by the federal bureau of investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.
16. "In-person, face-to-face" means interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.
17. "Interjurisdictional practice certificate" means a certificate issued by the association of state and provincial psychology boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily, and verification of one's qualifications for such practice.

18. "License" means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.
19. "Noncompact state" means any state which is not at the time a compact state.
20. "Psychologist" means an individual licensed for the independent practice of psychology.
21. "Psychology interjurisdictional compact commission" also referred to as "commission" means the national administration of which all compact states are members.
22. "Receiving state" means a compact state where the client/patient is physically located when the telepsychological services are delivered.
23. "Rule" means a written statement by the psychology interjurisdictional compact commission promulgated pursuant to article XI of the compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a compact state, and includes the amendment, repeal, or suspension of an existing rule.
24. "Significant investigatory information" means:
 - a. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or
 - b. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.
25. "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia.
26. "State psychology regulatory authority" means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.
27. "Telepsychology" means the provision of psychological services using telecommunication technologies.
28. "Temporary authorization to practice" means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this compact, in another compact state.
29. "Temporary in-person, face-to-face practice" means where a psychologist is physically present (not through the use of telecommunications technologies), in the distant state to provide for the practice of psychology for thirty days within a calendar year and based on notification to the distant state.

ARTICLE III - HOME STATE LICENSURE

1. The home state shall be a compact state where a psychologist is licensed to practice psychology.
2. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.
3. Any compact state may require a psychologist not previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of this compact.
4. Any compact may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of this compact.
5. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:
 - a. Currently requires the psychologist to hold an active e.passport;
 - b. Has a mechanism in place for receiving and investigation complaints about licensed individuals;
 - c. Notifies to commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;
 - d. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation, or other designee with similar authority, no later than ten years after activation of the compact; and
 - e. Complies with the bylaws and rules of the commission.
6. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:
 - a. Currently requires the psychologist to hold an active interjurisdictional practice certificate;
 - b. Has a mechanism in place for receiving and investigation complaints about licensed individuals;
 - c. Notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

- d. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the federal bureau of investigation, or other designee with similar authority, no later than ten years after activation of the compact; and
- e. Complies with the bylaws and rules of the commission.

ARTICLE IV - COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

1. Compact states shall recognize the right of a psychologist, licensed in a compact state in conformance with article III, to practice telepsychology in other compact states (receiving states) in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the compact.
2. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must:
 - a. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:
 - (1) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees;
 - (2) A foreign college or university deemed to be equivalent to paragraph 1 by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service;
 - b. Hold a graduate degree in psychology that meets the following criteria:
 - (1) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;
 - (2) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;
 - (3) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
 - (4) The program must consist of an integrated, organized sequence of study;
 - (5) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;
 - (6) The designated director of the program must be a psychologist and a member of the core faculty;

- (7) The program must have an identifiable body of students who are matriculated in that program for a degree;
 - (8) The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;
 - (9) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;
 - (10) The program includes an acceptable residency as defined by the rules of the commission.
- c. Possess a current, full and unrestricted license to practice psychology in a home state which is a compact state;
 - d. Have no history of adverse action that violate the rules of the commission;
 - e. Have no criminal record history reported on an identity history summary that violates the rules of the commission;
 - f. Possess a current, active e.passport;
 - g. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology, criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the commission; and
 - h. Meet other criteria as defined by the rules of the commission.
- 3. The home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology.
 - 4. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's scope of practice. In accordance with that state's due process law, a receiving state may limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state promptly shall notify the home state and the commission.
 - 5. If a psychologist's license in any home state, another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended or otherwise limited, the e.passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V - COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

1. Compact states shall also recognize the right of a psychologist, licensed in a compact state in conformance with article III, to practice temporarily in other compact states (distant states) in which the psychologist is not licensed, as provided in the compact.
2. To exercise the temporary authorization to practice under the terms and provisions of this compact, a psychologist licensed to practice in a compact state must:
 - a. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:
 - (1) Regionally accredited by an accrediting body recognized by the United States department of education to grant graduate degrees, or authorized by provincial statute or royal charter to grant doctoral degrees; or
 - (2) A foreign college or university deemed to be equivalent to paragraph 1 by a foreign credential evaluation service that is a member of the national association of credential evaluation services or by a recognized foreign credential evaluation service; and
 - b. Hold a graduate degree in psychology that meets the following criteria:
 - (1) The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists;
 - (2) The psychology program must stand as a recognizable, coherent, organizational entity within the institution;
 - (3) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;
 - (4) The program must consist of an integrated, organized sequence of study;
 - (5) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;
 - (6) The designated director of the program must be a psychologist and a member of the core faculty;
 - (7) The program must have an identifiable body of students who are matriculated in that program for a degree;
 - (8) The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;
 - (9) The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;

- (10) The program includes an acceptable residency as defined by the rules of the commission.
- c. Possess a current, full and unrestricted license to practice psychology in a home state which is a compact state;
 - d. No history of adverse action that violate the rules of the commission;
 - e. No criminal record history that violates the rules of the commission;
 - f. Possess a current, active interjurisdictional practice certificate;
 - g. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the commission; and
 - h. Meet other criteria as defined by the rules of the commission.
3. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.
 4. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state promptly shall notify the home state and the commission.
 5. If a psychologist's license in any home state, another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended, or otherwise limited, the interjurisdictional practice certificate shall be revoked and therefore the psychologist shall not be eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI - CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a home state via telecommunications technologies with a client/patient in a receiving state;
2. Other conditions regarding telepsychology as determined by rules promulgated by the commission.

ARTICLE VII - ADVERSE ACTIONS

1. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the

- power to take adverse action on a psychologist's temporary authorization to practice within that distant state.
2. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.
 3. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the e.passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the interjurisdictional practice certificate is revoked.
 - a. All home state disciplinary orders which impose adverse action shall be reported to the commission in accordance with the rules promulgated by the commission. A compact state shall report adverse actions in accordance with the rules of the commission.
 - b. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the commission.
 - c. Other actions may be imposed as determined by the rules promulgated by the commission.
 4. A home state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.
 5. A distant state's psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, the distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.
 6. Nothing in this compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.
 7. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to this subsection.

ARTICLE VIII - ADDITIONAL AUTHORITIES INVESTED IN

A COMPACT STATE'S PSYCHOLOGY REGULATORY AUTHORITY

In addition to any other powers granted under state law, a compact state's psychology regulatory authority shall have the authority under this compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's psychology regulatory authority for the attendance and testimony of witnesses, and/or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and
2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice.
3. During the course of any investigation, a psychologist may not change the psychologist's home state licensure. A home state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state psychology regulatory authority shall promptly report the conclusions of such investigations to the commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her home state licensure. The commission promptly shall notify the new home state of any such decisions as provided in the rules of the commission. All information provided to the commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX - COORDINATED LICENSURE INFORMATION SYSTEM

1. The commission shall provide for the development and maintenance of a coordinated licensure information system (coordinated database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this compact is applicable in all compact states as defined by the rules of the commission.
2. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the coordinated database on all licensees as required by the rules of the commission, including:
 - a. Identifying information;
 - b. Licensure data;
 - c. Significant investigatory information;
 - d. Adverse actions against a psychologist's license;

- e. An indicator that a psychologist's authority to practice interjurisdictional telepsychology and/or temporary authorization to practice is revoked;
 - f. Nonconfidential information related to alternative program participation information;
 - g. Any denial of application for licensure, and the reasons for such denial; and
 - h. Other information which may facilitate the administration of this compact, as determined by the rules of the commission.
3. The coordinated database administrator promptly shall notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.
 4. Compact states reporting information to the coordinated database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.
 5. Any information submitted to the coordinated database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the coordinated database.

ARTICLE X - ESTABLISHMENT OF THE PSYCHOLOGY

INTERJURISDICTIONAL COMPACT COMMISSION

1. The compact states hereby create and establish a joint public agency known as the psychology interjurisdictional compact commission.
 - a. The commission is a body politic and an instrumentality of the compact states.
 - b. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
 - c. Nothing in this compact shall be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
 - a. The commission shall consist of one voting representative appointed by each compact state who shall serve as that state's commissioner. The state psychology regulatory authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:
 - (1) Executive director, executive secretary, or similar executive;
 - (2) Current member of the state psychology regulatory authority of a compact state; or

- (3) Designee empowered with the appropriate delegate authority to act on behalf of the compact state.
- b. Any commissioner may be removed or suspended from office as provided by the law of the state from which the commissioner is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.
- c. Each commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A commissioner shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for commissioners' participation in meetings by telephone or other means of communication.
- d. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
- e. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in article XI.
- f. The commission may convene in a closed, nonpublic meeting if the commission must discuss:
- (1) Noncompliance of a compact state with its obligations under the compact;
 - (2) The employment, compensation, discipline, or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices, and procedures;
 - (3) Current, threatened, or reasonably anticipated litigation against the commission;
 - (4) Negotiation of contracts for the purchase or sale of goods, services, or real estate;
 - (5) Accusation against any person of a crime or formally censuring any person;
 - (6) Disclosure of trade secrets or commercial or financial information which is privileged or confidential;
 - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (8) Disclosure of investigatory records compiled for law enforcement purposes;
 - (9) Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the compact; or

- (10) Matters specifically exempted from disclosure by federal and state statute.
- g. If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the commission or order of a court of competent jurisdiction.
3. The commission shall, by a majority vote of the commissioners, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:
- a. Establishing the fiscal year of the commission;
- b. Providing reasonable standards and procedures:
- (1) For the establishment and meetings of other committees; and
- (2) Governing any general or specific delegation of any authority or function of the commission;
- c. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each commissioner with no proxy votes allowed;
- d. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;
- e. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
- f. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
- g. Providing a mechanism for concluding the operations of the commission and the equitable disposition of any surplus funds that may exist after the

- termination of the compact after the payment and/or reserving of all of its debts and obligations;
- h. The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;
 - i. The commission shall maintain its financial records in accordance with the bylaws; and
 - j. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.
4. The commission shall have the following powers:
- a. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rule shall have the force and effect of law and shall be binding in all compact states;
 - b. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;
 - c. To purchase and maintain insurance and bonds;
 - d. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compact state;
 - e. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - f. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;
 - g. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
 - h. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal or mixed;
 - i. To establish a budget and make expenditures;
 - j. To borrow money;
 - k. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and

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- consumer representatives, and such other interested persons as may be designated in this compact and the bylaws:
- l. To provide and receive information from, and to cooperate with, law enforcement agencies;
 - m. To adopt and use an official seal; and
 - n. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.
5. The executive board. The elected officers shall serve as the executive board, which shall have the power to act on behalf of the commission according to the terms of this compact.
- a. The executive board shall be comprised of six members:
 - (1) Five voting members who are elected from the current membership of the commission by the commission; and
 - (2) One ex officio, nonvoting member from the recognized membership organization composed of state and provincial psychology regulatory authorities.
 - b. The ex officio member must have served as staff or member on a state psychology regulatory authority and will be selected by its respective organization.
 - c. The commission may remove any member of the executive board as provided in bylaws.
 - d. The executive board shall meet at least annually.
 - e. The executive board shall have the following duties and responsibilities:
 - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact states such as annual dues, and any other applicable fees;
 - (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
 - (3) Prepare and recommend the budget;
 - (4) Maintain financial records on behalf of the commission;
 - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
 - (6) Establish additional committees as necessary; and
 - (7) Other duties as provided in rules or bylaws.
6. Financing of the commission.

- a. The commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.
 - b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
 - c. The commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission which shall promulgate a rule binding upon all compact states.
 - d. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the compact states, except by and with the authority of the compact state.
 - e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.
7. Qualified immunity, defense, and indemnification.
- a. The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.
 - b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

- c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI - RULEMAKING

1. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.
2. If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compact state.
3. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.
4. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - a. On the website of the commission; and
 - b. On the website of each compact states' psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.
5. The notice of proposed rulemaking shall include:
 - a. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment and the reason for the proposed rule;
 - c. A request for comments on the proposed rule from any interested person; and
 - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
6. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

7. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
 - a. At least twenty-five persons who submit comments independently of each other;
 - b. A governmental subdivision or agency; or
 - c. A duly appointed person in an association that has having at least twenty-five members.
8. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.
 - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
 - b. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
 - c. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.
 - d. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
9. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
10. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
12. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
 - a. Meet an imminent threat to public health, safety, or welfare;

- b. Prevent a loss of commission or compact state funds;
 - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - d. Protect public health and safety.
13. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1. Oversight.

- a. The executive, legislative, and judicial branches of state government in each compact state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.
- b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
- c. The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

2. Default, technical assistance, and termination.

- a. If the commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
 - (1) Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default, and/or any other action to be taken by the commission; and
 - (2) Provide remedial training and specific technical assistance regarding the default.
- b. If a state in default fails to remedy the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the

compact states, and all rights, privileges and benefits conferred by this compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

- c. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the compact states.
- d. A compact state which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.
- e. The commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
- f. The defaulting state may appeal the action of the commission by petitioning the United States district court for the state of Georgia or the federal district where the compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. Dispute resolution.

- a. Upon request by a compact state, the commission shall attempt to resolve disputes related to the compact which arise among compact states and between compact and noncompact states.
- b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

4. Enforcement.

- a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
- b. By majority vote, the commission may initiate legal action in the United States district court for the state of Georgia or the federal district where the compact has its principal offices against a compact state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.
- c. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

**ARTICLE XIII - DATE OF IMPLEMENTATION OF THE PSYCHOLOGY
INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES,
WITHDRAWAL, AND AMENDMENTS**

1. The compact shall come into effect on the date on which the compact is enacted into law in the seventh compact state. The provisions which become effective at that time shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.
2. Any state which joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule which has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.
3. Any compact state may withdraw from this compact by enacting a statute repealing the same.
 - a. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.
 - b. Withdrawal shall not affect the continuing requirement of the withdrawing state's psychology regulatory authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
4. Nothing contained in this compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a noncompact state which does not conflict with the provisions of this compact.
5. This compact may be amended by the compact states. No amendment to this compact shall become effective and binding upon any compact state until it is enacted into the law of all compact states.

ARTICLE XIV - CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining compact states.

Approved April 13, 2023

Filed April 14, 2023

CHAPTER 391

SENATE BILL NO. 2187

(Senators Cleary, Hogan, K. Roers)
(Representatives Porter, D. Ruby, Weisz)

AN ACT to create and enact chapter 43-47.1 of the North Dakota Century Code, relating to adoption of the counseling compact; and to amend and reenact subsection 2 of section 43-47-06 of the North Dakota Century Code, relating to licensure of counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-47-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Provided personal and professional recommendations that meet the requirements adopted by the board and satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience, at least fifty percent of which must have been under a licensed professional counselor or licensed psychologist, or its equivalent as determined by the board, and the additional supervised experience may have been with other qualified professionals designated by the board which are competent in the area of practice being supervised, if barriers due to geographical location, disability, or other factors determined by the board to create a hardship exist for the applicant. The qualified professional must be registered or otherwise qualified as a clinical supervisor by the board that licenses the other professional;
 - d. Provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
 - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.

SECTION 2. Chapter 43-47.1 of the North Dakota Century Code is created and enacted as follows:

43-47.1-01. Counseling compact.**ARTICLE I - PURPOSE**

1. The purpose of this compact is to facilitate interstate practice of licensed professional counselors with the goal of improving public access to professional counseling services.
2. The practice of professional counseling occurs in the state where the client is located at the time of the counseling services. The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.
3. This compact is designed to:
 - a. Increase public access to professional counseling services by providing for the mutual recognition of other member state licenses;
 - b. Enhance the states' ability to protect the public's health and safety;
 - c. Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors;
 - d. Support spouses of relocating active duty military personnel;
 - e. Enhance the exchange of licensure, investigative, and disciplinary information among member states;
 - f. Allow for the use of telehealth technology to facilitate increased access to professional counseling services;
 - g. Support the uniformity of professional counseling licensure requirements throughout the states to promote public safety and public health benefits;
 - h. Invest all member states with the authority to hold a licensed professional counselor accountable for meeting all state practice laws in the state in which the client is located at the time care is rendered through the mutual recognition of member state licenses;
 - i. Eliminate the necessity for licenses in multiple states; and
 - j. Provide opportunities for interstate practice by licensed professional counselors who meet uniform licensure requirements.

ARTICLE II - DEFINITIONS

As used in this chapter, and except as otherwise provided, the following definitions apply:

1. "Active duty military" means full-time duty status in the active uniformed service of the United States of America, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. chapters 1209 and 1211.
2. "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other

- authority against a licensed professional counselor, including actions against an individual's license or privilege to practice, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a licensed professional counselor's authorization to practice, including issuance of a cease and desist action.
3. "Alternative program" means a nondisciplinary monitoring or practice remediation process approved by a professional counseling licensing board to address impaired practitioners.
 4. "Continuing competence and education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.
 5. "Counseling compact commission" or "commission" means the national administrative body which membership consists of all states that have enacted the compact.
 6. "Current significant investigative information" means:
 - a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the licensed professional counselor to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
 - b. Investigative information that indicates the licensed professional counselor represents an immediate threat to public health and safety regardless of whether the licensed professional counselor has been notified and had an opportunity to respond.
 7. "Data system" means a repository of information about licensees, including continuing education, examination, licensure, investigative, privilege to practice, and adverse action information.
 8. "Encumbered license" means a license in which an adverse action restricts the practice of licensed professional counseling by the licensee and the adverse action has been reported to the national practitioner data bank.
 9. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of licensed professional counseling by a licensing board.
 10. "Executive committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.
 11. "Home state" means the member state that is the licensee's primary state of residence.
 12. "Impaired practitioner" means an individual who has a condition that may impair the individual's ability to practice as a licensed professional counselor without some type of intervention and may include alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

13. "Investigative information" means information, records, and documents received or generated by a professional counseling licensing board pursuant to an investigation.
14. "Jurisprudence requirement", if required by a member state, means the assessment of an individual's knowledge of the laws and rules governing the practice of professional counseling in a state.
15. "Licensed professional counselor" means a counselor licensed by a member state, regardless of the title used by that state, to independently assess, diagnose, and treat behavioral health conditions.
16. "Licensee" means an individual who currently holds an authorization from the state to practice as a licensed professional counselor.
17. "Licensing board" means the agency of a state, or equivalent, responsible for the licensing and regulation of licensed professional counselors.
18. "Member state" means a state that has enacted the compact.
19. "Privilege to practice" means a legal authorization, which is equivalent to a license, permitting the practice of professional counseling in a remote state.
20. "Professional counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a licensed professional counselor.
21. "Remote state" means a member state other than the home state, where a licensee is exercising or seeking to exercise the privilege to practice.
22. "Rule" means a regulation promulgated by the commission which has the force of law.
23. "Single state license" means a licensed professional counselor license issued by a member state which authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.
24. "State" means any state, commonwealth, district, or territory of the United States of America which regulates the practice of professional counseling.
25. "Telehealth" means the application of telecommunication technology to deliver professional counseling services remotely to assess, diagnose, and treat behavioral health conditions.
26. "Unencumbered license" means a license that authorizes a licensed professional counselor to engage in the full and unrestricted practice of professional counseling.

ARTICLE III - STATE PARTICIPATION IN THE COMPACT

1. To participate in the compact, a state currently:

 - a. Shall license and regulate licensed professional counselors;
 - b. Shall require licensees to pass a nationally recognized exam approved by the commission;

- c. Shall require licensees to have a sixty semester-hour, or ninety quarter-hour, master's degree in counseling or sixty semester-hours, or ninety quarter-hours, of graduate course work, including the following topic areas:
 - (1) Professional counseling orientation and ethical practice;
 - (2) Social and cultural diversity;
 - (3) Human growth and development;
 - (4) Career development;
 - (5) Counseling and helping relationships;
 - (6) Group counseling and group work;
 - (7) Diagnosis and treatment; assessment and testing;
 - (8) Research and program evaluation; and
 - (9) Other areas as determined by the commission;
 - d. Shall require licensees to complete a supervised postgraduate professional experience as defined by the commission; and
 - e. Must have a mechanism in place for receiving and investigating complaints about licensees.
2. A member state shall:
- a. Participate fully in the commission's data system, including using the commission's unique identifier as defined in rules;
 - b. Notify the commission, in compliance with the terms of the compact and rules, of any adverse action or the availability of investigative information regarding a licensee;
 - c. Implement or use procedures for considering the criminal history records of applicants for an initial privilege to practice. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;
 - (1) A member state shall implement fully a criminal background check requirement, within a time frame established by rule, by receiving the results of the federal bureau of investigation record search and shall use the results in making licensure decisions.
 - (2) Communication between a member state, the commission, and among member states regarding the verification of eligibility for licensure through the compact may not include any information received from the federal bureau of investigation relating to a federal criminal records check performed by a member state under Public Law No. 92-544.
 - d. Comply with the rules of the commission;

- e. Require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;
 - f. Grant the privilege to practice to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the compact and rules; and
 - g. Provide for the attendance of the state's commissioner at the counseling compact commission meetings.
3. Member states may charge a fee for granting the privilege to practice.
 4. Individuals not residing in a member state shall continue to be able to apply for a member state's single state license as provided under the laws of each member state; however, the single state license granted to these individuals may not be recognized as granting a privilege to practice professional counseling in any other member state.
 5. This compact does not affect the requirements established by a member state for the issuance of a single state license.
 6. A license issued to a licensed professional counselor by a home state to a resident in that state must be recognized by each member state as authorizing a licensed professional counselor to practice professional counseling, under a privilege to practice, in each member state.

ARTICLE IV - PRIVILEGE TO PRACTICE

1. To exercise the privilege to practice under the terms and provisions of the compact, the licensee:
 - a. Shall hold a license in the home state;
 - b. Must have a valid United States social security number or national practitioner identifier;
 - c. Must be eligible for a privilege to practice in any member state in accordance with subsections 4, 7, and 8;
 - d. May not have not had any encumbrance or restriction against any license or privilege to practice within the previous two years;
 - e. Shall notify the commission that the licensee is seeking the privilege to practice within a remote state;
 - f. Shall pay any applicable fees, including any state fee, for the privilege to practice;
 - g. Shall meet any continuing competence and education requirements established by the home state;
 - h. Shall meet any jurisprudence requirements established by the remote state in which the licensee is seeking a privilege to practice; and

- i. Shall report to the commission any adverse action, encumbrance, or restriction on license taken by any nonmember state within thirty days from the date the action is taken.
2. The privilege to practice is valid until the expiration date of the home state license. The licensee shall comply with the requirements of subsection 1 to maintain the privilege to practice in the remote state.
3. A licensee providing professional counseling in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.
4. A licensee providing professional counseling services in a remote state is subject to that state's regulatory authority. In accordance with due process and that state's laws, a remote state may remove a licensee's privilege to practice in the remote state for a specific period of time, impose fines, and take any other necessary actions to protect the health and safety of its citizens. The licensee may be ineligible for a privilege to practice in any member state until the specific time for removal has passed and all fines are paid.
5. If a home state license is encumbered, the licensee shall lose the privilege to practice in any remote state until the following occur:
 - a. The home state license is no longer encumbered; and
 - b. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
6. Once an encumbered license in the home state is restored to good standing, the licensee shall meet the requirements of subsection 1 to obtain a privilege to practice in any remote state.
7. If a licensee's privilege to practice in any remote state is removed, the individual may lose the privilege to practice in all other remote states until the following occur:
 - a. The specific period of time for which the privilege to practice was removed has ended;
 - b. All fines have been paid; and
 - c. The licensee has not had any encumbrance or restriction against any license or privilege to practice within the previous two years.
8. Once the requirements of subsection 7 have been met, the licensee shall meet the requirements in subsection 1 to obtain a privilege to practice in a remote state.

ARTICLE V - OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

1. A licensed professional counselor may hold a home state license, which allows for a privilege to practice in other member states, in only one member state at a time.

2. If a licensed professional counselor changes primary state of residence by moving between two member states:
 - a. The licensed professional counselor shall file an application for obtaining a new home state license based on a privilege to practice, pay all applicable fees, and notify the current and new home state in accordance with applicable rules adopted by the commission.
 - b. Upon receipt of an application for obtaining a new home state license by virtue of a privilege to practice, the new home state shall verify that the licensed professional counselor meets the pertinent criteria outlined in article IV via the data system, without need for primary source verification except for:
 - (1) A federal bureau of investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the commission in accordance with Public Law No. 92-544;
 - (2) A criminal background check as required by the new home state; and
 - (3) Completion of any requisite jurisprudence requirements of the new home state.
 - c. The former home state shall convert the former home state license into a privilege to practice once the new home state has activated the new home state license in accordance with applicable rules adopted by the commission.
 - d. Notwithstanding any other provision of this compact, if the licensed professional counselor cannot meet the criteria in article IV, the new home state may apply its requirements for issuing a new single state license.
 - e. The licensed professional counselor shall pay all applicable fees to the new home state to be issued a new home state license.
3. If a licensed professional counselor changes primary state of residence by moving from a member state to a nonmember state, or from a nonmember state to a member state, the state criteria must apply for issuance of a single state license in the new state.
4. This compact may not interfere with a licensee's ability to hold a single state license in multiple states; however, for the purposes of this compact, a licensee must have only one home state license.
5. This compact may not affect the requirements established by a member state for the issuance of a single state license.

ARTICLE VI - ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall change only the

individual's home state through application for licensure in the new state, or through the process outlined in article V.

ARTICLE VII - COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

1. Member states shall recognize the right of a licensed professional counselor, licensed by a home state in accordance with article III and under rules promulgated by the commission, to practice professional counseling in any member state via telehealth under a privilege to practice as provided in the compact and rules promulgated by the commission.
2. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations of the remote state.

ARTICLE VIII - ADVERSE ACTIONS

1. In addition to the other powers conferred by state law, a remote state must have the authority, in accordance with existing state due process law, to:
 - a. Take adverse action against a licensed professional counselor's privilege to practice within that member state; and
 - b. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before the court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
2. Only the home state has the power to take adverse action against a licensed professional counselor's license issued by the home state.
3. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as the home state would if the conduct had occurred within the home state. In so doing, the home state shall apply its state laws to determine appropriate action.
4. The home state shall complete any pending investigations of a licensed professional counselor who changes primary state of residence during the course of the investigations. The home state also has the authority to take appropriate action and promptly shall report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system promptly shall notify the new home state of any adverse actions.
5. A member state, if otherwise permitted by state law, may recover from the affected licensed professional counselor the costs of investigations and dispositions of cases resulting from any adverse action taken against that licensed professional counselor.

6. A member state may take adverse action based on the factual findings of the remote state, provided that the member state follows its procedures for taking the adverse action.
7. Joint investigations:
 - a. In addition to the authority granted to a member state by its respective professional counseling practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.
 - b. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.
8. If adverse action is taken by the home state against the license of a licensed professional counselor, the licensed professional counselor's privilege to practice in all other member states must be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against the license of a licensed professional counselor must include a statement that the licensed professional counselor's privilege to practice is deactivated in all member states during the pendency of the order.
9. If a member state takes adverse action, the member state promptly shall notify the administrator of the data system. The administrator of the data system promptly shall notify the home state of any adverse actions by remote states.
10. This compact does not override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

ARTICLE IX - ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

1. The compact member states hereby create and establish a joint public agency known as the counseling compact commission.
 - a. The commission is an instrumentality of the compact states.
 - b. Venue is proper and judicial proceedings by or against the commission must be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent the commission adopts or consents to participate in alternative dispute resolution proceedings.
 - c. This compact may not be construed to be a waiver of sovereign immunity.
2. Membership, voting, and meetings.
 - a. Each member state must have and be limited to one delegate selected by that member state's licensing board.
 - b. The delegate must be either:

- (1) A current member of the licensing board at the time of appointment, who is a licensed professional counselor or public member; or
 - (2) An administrator of the licensing board.
 - c. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.
 - d. The member state licensing board shall fill any vacancy occurring on the commission within sixty days.
 - e. Each delegate is entitled to one vote with regard to the promulgation of rules and creation of bylaws and otherwise must have an opportunity to participate in the business and affairs of the commission.
 - f. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
 - g. The commission shall meet at least once during each calendar year. Additional meetings must be held as set forth in the bylaws.
 - h. The commission shall establish by rule a term of office for delegates and may by rule establish term limits.
3. The commission has the following powers and duties to:
 - a. Establish the fiscal year of the commission;
 - b. Establish bylaws;
 - c. Maintain its financial records in accordance with the bylaws;
 - d. Meet and take such actions as are consistent with the provisions of this compact and the bylaws;
 - e. Promulgate rules that are binding to the extent and in the manner provided for in the compact;
 - f. Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law must not be affected;
 - g. Purchase and maintain insurance and bonds;
 - h. Borrow, accept, or contract for services of personnel, including employees of a member state;
 - i. Hire employees, elect or appoint officers, fix compensation, define duties, grant the individuals appropriate authority to carry out the purposes of the compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
 - j. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of

- the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest, or both;
- k. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;
 - l. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
 - m. Establish a budget and make expenditures;
 - n. Borrow money;
 - o. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;
 - p. Provide and receive information from, and cooperate with, law enforcement agencies;
 - q. Establish and elect an executive committee; and
 - r. Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of professional counseling licensure and practice.
4. The executive committee.
- a. The executive committee has the power to act on behalf of the commission according to the terms of this compact.
 - b. The executive committee is composed of up to eleven members, including:
 - (1) Seven voting members who are elected by the commission from the current membership of the commission; and
 - (2) Up to four ex-officio, nonvoting members from four recognized national professional counselor organizations.
 - c. The ex-officio members will be selected by their respective organizations.
 - d. The commission may remove any member of the executive committee as provided in bylaws.
 - e. The executive committee shall meet at least annually.
 - f. The executive committee has the following duties and responsibilities to:
 - (1) Recommend to the entire commission changes to the rules or bylaws, changes to this compact legislation, fees paid by compact member states such as annual dues, and any commission compact fee charged to licensees for the privilege to practice;

- (2) Ensure compact administration services are appropriately provided, contractual or otherwise;
 - (3) Prepare and recommend the budget;
 - (4) Maintain financial records on behalf of the commission;
 - (5) Monitor compact compliance of member states and provide compliance reports to the commission;
 - (6) Establish additional committees as necessary; and
 - (7) Execute other duties as provided in rules or bylaws.
5. Meetings of the commission.
- a. All meetings must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in article XI.
 - b. The commission or the executive committee or other committees of the commission may convene in a closed, nonpublic meeting if the commission or executive committee or other committees of the commission must discuss:
 - (1) Noncompliance of a member state with its obligations under the compact;
 - (2) The employment, compensation, discipline or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;
 - (3) Current, threatened, or reasonably anticipated litigation;
 - (4) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
 - (5) Accusing any person of a crime or formally censuring any person;
 - (6) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
 - (7) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (8) Disclosure of investigative records compiled for law enforcement purposes;
 - (9) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or
 - (10) Matters specifically exempted from disclosure by federal or member state statute.

- c. If a meeting, or portion of a meeting, is closed pursuant to this subsection, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.
 - d. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.
6. Financing of the commission.
- a. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
 - b. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
 - c. The commission may levy and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.
 - d. The commission may not incur obligations of any kind before securing the funds adequate to meet the obligations, nor may the commission pledge the credit of any of the member states, except by and with the authority of the member state.
 - e. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission must be subject to the audit and accounting procedures established under its bylaws; however, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
7. Qualified immunity, defense, and indemnification.
- a. The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this subdivision may be construed to protect any such person from suit or liability, or both, for any damage, loss, injury, or

- liability caused by the intentional, willful, or wanton misconduct of that person.
- b. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against which the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining that person's own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional, willful, or wanton misconduct.
 - c. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE X - DATA SYSTEM

1. The commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
2. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this compact is applicable as required by the rules of the commission, including:

 - a. Identifying information;
 - b. Licensure data;
 - c. Adverse actions against a license or privilege to practice;
 - d. Nonconfidential information related to alternative program participation;
 - e. Any denial of application for licensure, and the reason for such denial;
 - f. Current significant investigative information; and
 - g. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.
3. Investigative information pertaining to a licensee in any member state will only be available to other member states.

4. The commission promptly shall notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.
5. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.
6. Any information submitted to the data system which is subsequently required to be expunged by the laws of the member state contributing the information must be removed from the data system.

ARTICLE XI - RULEMAKING

1. The commission shall promulgate reasonable rules to effectively and efficiently achieve the purpose of the compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner beyond the scope of the purposes of the compact, or the powers granted under this compact, then such an action by the commission is invalid and has no force or effect.
2. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted under this article. Rules and amendments become binding as of the date specified in each rule or amendment.
3. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact within four years of the date of adoption of the rule, the rule has no further force and effect in any member state.
4. Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
5. Before promulgation and adoption of a final rule or rules by the commission, and at least thirty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:
 - a. On the website of the commission or other publicly accessible platform; and
 - b. On the website of each member state's professional counseling licensing board, other publicly accessible platform, or the publication in which each state would otherwise publish proposed rules.
6. The notice of proposed rulemaking must include:
 - a. The proposed time, date, and location of the meeting at which the rule will be considered and voted upon;
 - b. The text of the proposed rule or amendment and the reason for the proposed rule;

- c. A request for comments on the proposed rule from any interested person; and
 - d. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
- 7. Before adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.
- 8. The commission shall grant an opportunity for a public hearing before the commission adopts a rule or amendment if a hearing is requested by:
 - a. At least twenty-five persons;
 - b. A state or federal governmental subdivision or agency; or
 - c. An association having at least twenty-five members.
- 9. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.
 - a. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.
 - b. Hearings must be conducted in a manner providing each person that wishes to comment a fair and reasonable opportunity to comment orally or in writing.
 - c. All hearings will be recorded. A copy of the recording will be made available on request.
 - d. This article may not be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this article.
- 10. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
- 11. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.
- 12. By majority vote of all members, the commission shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- 13. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or

hearing, provided that the usual rulemaking procedures provided in the compact and in this article must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately to:

- a. Meet an imminent threat to public health, safety, or welfare;
 - b. Prevent a loss of commission or member state funds;
 - c. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or
 - d. Protect public health and safety.
14. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the chair of the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE XII - OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

1. Oversight.

- a. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated under this compact have standing as statutory law.
 - b. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.
 - c. The commission must be entitled to receive service of process in the proceeding and must have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.
2. If the commission determines a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:
- a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default or any

- other action to be taken by the commission, or any combination of these requirements; and
- b. Provide remedial training and specific technical assistance regarding the default.
 3. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
 4. Termination of membership in the compact must be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.
 5. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
 6. The commission may not pay any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.
 7. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.
 8. Dispute resolution.

 - a. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact which arise among member states and between member and nonmember states.
 - b. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.
 9. Enforcement.

 - a. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.
 - b. By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member must be awarded all costs of the litigation, including reasonable attorney's fees.

- c. The remedies provided under the compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE XIII - DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

1. The compact becomes effective on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, are limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to implement and administer the compact.
2. Any state that joins the compact subsequent to the commission's initial adoption of the rules must be subject to the rules existing on the date on which the compact becomes law in that state. Any rule previously adopted by the commission has the full force and effect of law on the day the compact becomes law in that state.
3. Any member state may withdraw from this compact by enacting a statute repealing the compact.
 - a. A member state's withdrawal may not take effect until six months after enactment of the repealing statute.
 - b. Withdrawal does not affect the continuing requirement of the withdrawing state's professional counseling licensing board to comply with the investigative and adverse action reporting requirements of this compact before the effective date of withdrawal.
4. This compact may not be construed to invalidate or prevent any professional counseling licensure agreement or other cooperative arrangement between a member state and a nonmember state which does not conflict with the provisions of this compact.
5. This compact may be amended by the member states. An amendment to this compact may not become effective and binding upon any member state until the amendment is enacted into the laws of all member states.

ARTICLE XIV - CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact must be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any member state or of the United States of America or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any member state, the compact must remain in full force and effect as to the remaining member states and as to the member state affected as to all severable matters.

ARTICLE XV - BINDING EFFECT OF COMPACT AND OTHER LAWS

1. A licensee providing professional counseling services in a remote state under the privilege to practice shall adhere to the laws and regulations, including scope of practice, of the remote state.
2. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.
3. Any laws in a member state in conflict with the compact are superseded to the extent of the conflict.
4. Any lawful actions of the commission, including all rules and bylaws properly promulgated by the commission, are binding upon the member states.
5. All permissible agreements between the commission and the member states are binding in accordance with the terms of the agreements.
6. In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision must be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Approved April 26, 2023

Filed April 27, 2023

CHAPTER 392

SENATE BILL NO. 2065

(Workforce Development Committee)
(At the request of the North Dakota Board of Reflexology)

AN ACT to create and enact sections 43-49-04.1 and 43-49-14 of the North Dakota Century Code, relating to the regulation of reflexologists; to amend and reenact sections 43-49-01, 43-49-02, 43-49-04, 43-49-05, 43-49-06, 43-49-08, 43-49-09, 43-49-12, and 43-49-13 of the North Dakota Century Code, relating to licensure of reflexologists; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-49-01 of the North Dakota Century Code is amended and reenacted as follows:

43-49-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the North Dakota board of reflexology.
2. "Reflexologist" means ~~a person~~ an individual who uses ~~special pressure techniques on the reflexes in the human feet, hands, and ears and who has studied the principles of reflexology and anatomy and physiology generally included in a regular course of study~~ is licensed to practice reflexology.
3. "Reflexology" means the application of specific or alternating pressure by the use of the practitioner's hands, thumbs, and fingers, and accepted tools, to reflex points in the client's hands, feet, or ears using alternating pressure, and such reflexes using techniques such as thumb walking, finger walking, hook and back up, and rotation on a reflex.

SECTION 2. AMENDMENT. Section 43-49-02 of the North Dakota Century Code is amended and reenacted as follows:

43-49-02. Board - Appointment - Terms.

The board consists of three ~~licensed reflexologists~~ members appointed by the governor ~~except the first board need not consist of licensed members. A person must be a member of the North Dakota reflexology association in order to be eligible for appointment to, and continued membership on, the board. Each member shall hold a current license issued by the board.~~ The members must be appointed for three years, staggered so that the term of one member expires as of July first of each year. Each member shall hold office until that member's successor is appointed and qualified. In July of each year the board shall meet ~~at some convenient place within the state and shall elect one member as president, one member as vice president, and one member as secretary-treasurer.~~ The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of the secretary-treasurer's duties. The board may employ, and set the compensation of, employees to assist the ~~secretary-treasurer~~ board in the performance of the ~~secretary-treasurer's~~ board's

duties. The board shall hold meetings ~~in the state~~ as determined necessary by the board to discharge its duties. Board members are entitled to receive ~~twenty-five dollars per day and travel expenses~~ compensation in an amount provided by law for state officials and employees when performing the official duties of the board. ~~In addition, the secretary-treasurer is to be paid an extra nine dollars per meeting.~~

SECTION 3. AMENDMENT. Section 43-49-04 of the North Dakota Century Code is amended and reenacted as follows:

43-49-04. Duties of the secretary-treasurer - Compensation - Expenses of the board.

The secretary-treasurer of the board shall:

1. Keep a record of:
 - a. The name and, address, electronic mail address, if available, and phone number of every person who is licensed to practice in the state;
 - b. The license number and date of issuance of the license for each licensed reflexologist;
 - c. The renewal date of each license; and
 - d. Record of payments received; and
 - e. Other information as required by the board.
2. Furnish, upon demand, any person a certified copy of records upon payment of a ten dollar fee plus twenty-five cents for each page copied.
3. Prepare and submit to the governor ~~and the North Dakota reflexology association~~ a detailed annual report on the income and expenses of the board and a list of licensed reflexologists.

SECTION 4. Section 43-49-04.1 of the North Dakota Century Code is created and enacted as follows:

43-49-04.1. Board rules.

The board may adopt and enforce rules as necessary to implement this chapter.

SECTION 5. AMENDMENT. Section 43-49-05 of the North Dakota Century Code is amended and reenacted as follows:

43-49-05. Exemptions.

This chapter does not apply to the activities or services of physicians, chiropractors, physical therapists, cosmetologists, registered nurses, massage therapists, or members of other professions licensed, certified, or registered by the state who may on occasion apply pressure to ~~the reflex points in the hands, feet, and ears~~ reflexes in the course of their work. This chapter does not apply to an individual who takes a self-help class and applies reflexology without pay on immediate family members or the individual's body.

SECTION 6. AMENDMENT. Section 43-49-06 of the North Dakota Century Code is amended and reenacted as follows:

43-49-06. Requisites for licensure.

Any ~~person~~individual who is eighteen years of age or more and is either a bona fide resident of this state for at least one month immediately preceding the application or is a resident of another state who is practicing reflexology in this state shall submit an application for licensure to the secretary-treasurer of the board. An applicant is entitled to be issued a license as a reflexologist if the applicant:

1. Presents a diploma, certification, or completion credentials issued by a reputable school of reflexology which has submitted its curriculum to the board and has been approved by the board which meets or exceeds a minimum of one hundred hours.
2. Presents three character references citing that the applicant is of good moral character.
3. Passes a ~~reasonable demonstrative~~practical and written examination in reflexology. If there is an applicant for examination, the board shall conduct an examination at least once a year at a time and place designated by the board. Examinations must be held in the state. An applicant must receive a ~~general average score on the examination of seventy five percent in all subjects involved and no score of less than fifty percent in any one subject~~score of eighty percent or higher on the practical examination and a seventy percent or higher on the written examination. The board shall notify the applicant of the applicant's score. An applicant who fails to pass ~~any subject~~either the written or practical examination is entitled to a re-examination ~~on that subject within six months~~the portion that was failed upon payment of an additional fee of fifty dollars or an amount established by the board. ~~Two re-examinations exhaust the privilege under the original application.~~
4. Pays a licensing fee of ~~seventy five~~one hundred fifty dollars or an amount set by the board.

SECTION 7. AMENDMENT. Section 43-49-08 of the North Dakota Century Code is amended and reenacted as follows:

43-49-08. Restriction on use of title.

A reflexologist licensed by the board may be held out as a "licensed reflexologist" and may use the abbreviation "L.R." as a part of or immediately following that ~~person's~~individual's name, in connection with the profession. No ~~person~~individual may use the title "licensed reflexologist" unless licensed in accordance with this chapter.

SECTION 8. AMENDMENT. Section 43-49-09 of the North Dakota Century Code is amended and reenacted as follows:

43-49-09. License - Display - Renewal - Renewal fee.

Each license must be conspicuously displayed at the place of practice. ~~A license must be recorded within thirty days after issuance in the office of the recorder, unless the board of county commissioners designates a different official, in any county where the reflexologist practices.~~

A license must be renewed before June first of each year. ~~A license renewed June first or later requires a late fee of fifty dollars or an amount established by the board.~~ The secretary-treasurer of the board shall ~~mail notice of renewal to~~notify in writing each licensed reflexologist's ~~address~~reflexologist as shown in the records of the

board at least thirty days before the expiration of the license. The notice must include any requests for information as deemed necessary for renewal as required by the board. The licensed reflexologist may renew a license by sending a renewal fee of the amount set by the board, not to exceed one hundred dollars, to the secretary-treasurer of the board, ~~and submitting. The licensed reflexologist shall submit~~ proof that ~~the reflexologist has attended a seminar on reflexology at least one of completing twelve continuing education credits during the preceding three years. A license that is not renewed by June thirtieth lapses.~~

SECTION 9. AMENDMENT. Section 43-49-12 of the North Dakota Century Code is amended and reenacted as follows:

43-49-12. Revocation of licensing.

The license of a licensed reflexologist ~~board~~ may be ~~revoked, suspended, deny, refuse to renew, revoke, suspend,~~ or annulled ~~by the board~~ place on probation a license issued under this chapter upon any one or more of the following grounds:

1. That the person is guilty of ~~gross~~ Gross malpractice or incompetence in the practice of reflexology.
2. That the person's mental or physical health endangers public health or safety.
3. That the person fails to comply with rules Violation of the provisions under this chapter or the rules adopted by the board.
4. ~~3.~~ That the person is guilty of Advertising by means of knowingly false or deceptive advertising statements.
5. ~~4.~~ That the person engages in Grossly unprofessional or dishonest conduct.
5. Fraud or deceit in admission to the practice of reflexology.

SECTION 10. AMENDMENT. Section 43-49-13 of the North Dakota Century Code is amended and reenacted as follows:

43-49-13. Administrative procedures.

Any person may file a written complaint with the board seeking disciplinary action against a reflexologist for violations of this chapter or rules adopted by the board. If the board determines that a complaint alleges facts that, if true, would require denial, revocation, suspension, or nonrenewal or other disciplinary action of a licensed reflexologist, the board shall conduct a hearing. Any hearing regarding denial of a license or a disciplinary action must be held pursuant to chapter 28-32. The board may dismiss a complaint that does not state facts that warrant action.

SECTION 11. Section 43-49-14 of the North Dakota Century Code is created and enacted as follows:

43-49-14. Penalty.

It is a class B misdemeanor for an individual to advertise as a reflexologist or practice reflexology without a license.

Approved April 4, 2023

Filed April 5, 2023