

HOUSE BILL NO. 1528

Introduced by

Representatives Mock, Bosch, Ista, Kempenich, Louser, Roers Jones, Toman, Weisz

Senators Davison, Paulson, K. Roers, Wanzek

1 A BILL for an Act to amend and reenact ~~section~~sections 54-46-02, 54-46-04, 54-46-05, and
2 54-46-08 of the North Dakota Century Code, relating to the final disposition of
3 records, mandatory records retention policies for state agencies, and the administration of
4 employee accounts upon employee departure from an agency.

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

6 **SECTION 1. AMENDMENT.** Section 54-46-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-46-02. Definitions.**

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

- 10 1. "Agency" means any department, office, commission, board, or other unit, however
11 designated, of the executive branch of state government, including the state board of
12 higher education and the entities under the control of the state board of higher
13 education.
- 14 2. "Record" means document, book, paper, photograph, electronic mail or
15 communication, sound recording or other material, regardless of ~~physical form or~~
16 characteristics, made or received pursuant to law or in connection with the transaction
17 of official business activities, policies, or decisions that provide administrative,
18 operational, fiscal, historical, audit, or business value. Library and museum material
19 made or acquired and preserved solely for reference or exhibition purposes, extra
20 copies of documents preserved only for convenience of reference, nonbusiness
21 related or draft electronic messages and stocks of publications and of processed
22 documents are not included within the definition of records as used in this chapter.
- 23 3. "State record" means:

- 1 a. A record of a department, office, commission, board, or other agency, however
- 2 designated, of the state government.
- 3 b. A record of the state legislative assembly held by an agency.
- 4 c. A record of any court of record, whether of statewide or local jurisdiction.
- 5 d. Any other record designated or treated as a state record under state law.

6 **SECTION 2. AMENDMENT.** Section 54-46-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **54-46-04. Duties of administrator.**

9 The administrator shall, with due regard for the functions of the agencies concerned:

- 10 1. Establish standards, procedures, and techniques for effective management of records.
- 11 2. Make continuing surveys of ~~paperwork~~ operations and recommend improvements in
- 12 current records management practices including the use of space, equipment, and
- 13 supplies employed in creating, maintaining, storing, and servicing records.
- 14 3. Establish standards for the preparation of schedules providing for the retention of state
- 15 records of continuing value and for the final disposition of state records no longer
- 16 possessing administrative, legal, or fiscal value.
- 17 4. Obtain reports from agencies as are required for the administration of the program.
- 18 5. Report noncompliance with the records management program to the office of the state
- 19 auditor or the office of the attorney general to determine appropriate action, at the
- 20 administrator's discretion.

21 **SECTION 3. AMENDMENT.** Section 54-46-05 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **54-46-05. Duties of agency heads.**

24 The head of each agency shall:

- 25 1. Establish and maintain an active, continuing program for the economical and efficient
- 26 management of the records of the agency.
- 27 2. Make and maintain records containing adequate and proper documentation of the
- 28 organization, functions, policies, decisions, procedures, and essential transactions of
- 29 the agency designed to furnish information to protect the legal and financial rights of
- 30 the state and of persons directly affected by the agency's activities.

3. Submit to the administrator, in accordance with the standards adopted by the administrator, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency.
4. Submit to the administrator lists of state records in the custody of the agency which are not needed in the transaction of current business and which do not have administrative, legal, or fiscal value.
5. Cooperate with the administrator in the conduct of surveys made by the administrator pursuant to this chapter, including resolving findings of noncompliance with the records management program as may be indicated in the final survey report. Failure to cooperate with the administrator may result in reported noncompliance as authorized under subsection 5 of section 54-46-04.
6. Comply with the rules, standards, and procedures adopted by the administrator.

SECTION 4. AMENDMENT. Section 54-46-08 of the North Dakota Century Code is amended and reenacted as follows:

54-46-08. Determination necessary for final disposition of records - Review of state data.

1. Prior to the final disposition of any type or class of record, the administrator, after consultation with the official or department head ~~concerned~~ downing the record, the attorney general, the state auditor, and the state archivist, shall determine that the type or class of record has no further administrative, legal, or fiscal value and is subject to final disposition under section 54-46-08.1 or section 54-46-09.
2. Each agency shall maintain, for at least one year, data contained in office productivity software, limited to electronic mail accounts and personal file storage, for all supervisory positions ~~develop policies related to the review of state data and notify the administrator of any policy changes made by July first of each year. Each agency shall retain state data received or created by each individual employed by the agency for a period of at least ninety days after the initial deletion of the state data to allow for the review of any administrative, legal, or fiscal information contained in the state data before permanent deletion. Any administrative, legal, or fiscal information contained in an employee's state data is considered a record and must be maintained pursuant to section 54-46-07 or evaluated and disposed of pursuant to this section or section 54-46-08.1.~~

~~1 a. For purposes of this subsection, "state data" includes any state employee
2 account, file, electronic mail, or other document containing state government
3 information that may have administrative, legal, or fiscal value.~~

~~4 b. For purposes of this subsection, "electronic mail" includes all information
5 contained in an electronic mail communication, including attachments.~~

6 3. a. Each agency shall develop policies related to the assumption of employee
7 account ownership upon employee departure. For an employee who holds a
8 supervisory position or above, the agency shall place an administrative hold on
9 an employee account to preserve the employee account in the event one of the
10 following occurs:

11 (1) The employee is terminated;

12 (2) The employee is placed on administrative leave;

13 (3) The employee resigns or departs without notice;

14 (4) The employee dies; or

15 (5) An event the agency deems sufficient to place the account on administrative
16 hold.

17 b. An agency shall ensure the employee account remains on administrative hold
18 until the account has been reviewed by the appropriate individual. The head of an
19 agency, or a records manager designated by the head of an agency, shall review
20 the employee account for all supervisory employees, except as required under
21 subdivision c.

22 c. If the employee was the head of an agency or a state officer appointed by the
23 governor under chapter 44-02, the employee account must be reviewed by the
24 employee's successor and the state archivist. The employee's successor and the
25 state archivist shall review the employee account for archival resources under
26 section 54-46-08.1, preserving archival resources as appropriate.

27 d. For purposes of this subsection:

28 (1) "Employee account" means physical files and electronic files,
29 communication, attachments, and other information stored in an employee
30 electronic mail account or electronic file storage account; and

1 (2) "Employee's successor" does not include an individual acting in the
2 successor's role or position temporarily before a successor is appointed
3 under section 44-02-03.

4 4. If a statute requiring retention of a record does not ~~either~~ provide a specific retention
5 period or specifically provide that the record be permanently retained, the
6 administrator, after completing the consultation required by this section, shall establish
7 a specific retention period for the record. The administrator shall annually survey the
8 state agencies and shall order final disposition under section 54-46-08.1 or section
9 54-46-09 of any records which have been determined to have no further
10 administrative, legal, or fiscal value pursuant to this section.