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MEMORANDUM

TO: Chairman Kasper, Subcommittee on SB 2243, House Industry, Business, and Labor Committee, 68th Legislative Assembly

FROM: Allyson M. Hicks, Assistant Attorney General, General Counsel for Food and Lodging Division of NDDHHS

RE: Section 1 of Amendment 23.0617.02003

DATE: March 21, 2023

QUESTION PRESENTED

Whether Section 1 of the 23.0617.02003 amendment of Senate Bill 2243, 68th Legislative Assembly, allows the North Dakota Department of Health and Human Services, Food and Lodging Division (hereinafter "Department"), to assess a civil penalty without a hearing.

CONCLUSION

The language in Section 1 of 23.0617.02003 amendment of Senate Bill 2243, 68th Legislative Assembly, currently requires that the Department hold a hearing under North Dakota Century Code (N.D.C.C.) chapter 28-32 prior to assessing a civil penalty.

ANALYSIS

Under N.D.C.C. § 23-10-12, the Department is required to process any disciplinary action against an applicant or licensee through the Administrative Agencies Practices Act set forth in N.D.C.C. 28-32:

23-10-12. Revocation of license - Penalty for operating without license.

The department may deny an application or take disciplinary action, up to and including revocation, against any applicant or licensee upon the failure of the applicant or licensee to comply with this chapter or with any of the rules adopted by the health council and regulations promulgated by the department. Before the department takes disciplinary action against a license, the department shall notify the licensee in writing of the reason disciplinary action is being considered and shall provide a reasonable amount of time for correction to be made. Action taken

under the authority granted in this section must comply with chapter 28-32. Any person who maintains or operates a mobile home park, recreational vehicle park, or campground without first obtaining a license, or who operates the same after revocation of the license, is guilty of an infraction.

As currently written, the civil penalty against the applicant for failure to provide the information requested by the application would be a disciplinary action taken by the Department against an applicant. All disciplinary actions for violations of N.D.C.C. ch. 23-10, unless otherwise specified by the Legislature, are governed by N.D.C.C. § 23-10-12. Because the language in Section 1 of 23.0617.02003 amendment of Senate Bill 2243, 68th Legislative Assembly, does not specify a different procedure, the Department is bound by N.D.C.C. § 23-10-12, which requires the Department to follow the process set forth in N.D.C.C. ch. 28-32 prior to assessing a civil penalty.