

HEALTH AND SAFETY

CHAPTER 290

SENATE BILL NO. 2117
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Health)

HEALTH OFFICER DISEASE CONTROL ORDERS

AN ACT to create and enact a new subsection to section 23-01-05 of the North Dakota Century Code, relating to the powers and duties of the state health officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-01-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities, and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 291

HOUSE BILL NO. 1330
(Larson, Ulmer)

TRAUMATIC HEAD INJURY REGISTRY

AN ACT to provide for the establishment of a registry of traumatic head injuries and to require the attending physician to report such injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. "Traumatic head injury" defined. As used in section 2 of this Act, "traumatic head injury" means an insult to the brain, not of a degenerative or congenital nature but caused by an external physical force that may produce a diminished or altered state of consciousness, which results in impairment of cognitive abilities or physical functioning and which may also result in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychosocial maladjustment.

SECTION 2. Central registry of traumatic head injury - Establishment - Reports. The state department of health shall establish and maintain a central registry of persons who sustain traumatic head injury in order to facilitate the provision of appropriate treatment and rehabilitative services to those persons by the division or other providers. Attending physicians in the state shall report to the department within seven days after identification of any person sustaining a traumatic head injury. The report must contain the name, age, residence, and diagnosis of the injured person and any additional information determined to be necessary by the department. A report submitted pursuant to this section and all information contained in the report is confidential, but the state department of health shall furnish a copy of the report to the department of human services. The department of human services shall use the information contained in the report to carry out the purposes of this Act and shall notify the attending physician and the injured person or immediate family of the rehabilitative services for persons sustaining traumatic head injuries.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 292

HOUSE BILL NO. 1665
(Representatives Stofferahn, Dalrymple)
(Senator Wright)

HEALTH CARE DATA COMMITTEE

AN ACT to establish a health care data committee as a standing committee of the state health council; and to provide a civil penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Health care data committee of state health council - Membership - Appointment by governor. The health care data committee is a standing committee of the state health council, consisting of not less than three nor more than five members, appointed by the chairman of the health council from the members of the council. A majority of the members of the health care data committee must be consumer members of the health council.

SECTION 2. Duties of health care data committee. To provide information to the public necessary for the enhancement of price competition in the health care market, the health care data committee may:

1. Collect, store, analyze, and provide health care data.
2. Compile the average aggregate charges by diagnosis for the twenty-five most common diagnoses, annual operating costs, revenues, capital expenditures, and utilization for each nonfederal acute care hospital in this state, and the average charges by source of payment and level of service in each long-term care facility in this state.
3. Establish a uniform format for the collection of information on charges to patients.
4. Prepare an annual report comparing the cost of hospitalization by diagnosis in each nonfederal acute care hospital and comparing average charges by source of payment and by level of service in each long-term care facility in the state.

5. Establish procedures that assure public availability of the information required to make informed health care purchasing decisions.
6. Establish arrangements with the department of health, the department of human services, the commissioner of insurance, the workmen's compensation bureau, and the public employees retirement system to assure patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data, and to act in a manner which does not duplicate data collection activities of other state agencies.

SECTION 3. Publication of a directory of licensed physicians. Under the auspices of the health care data committee, the department of health in conjunction with the board of medical examiners shall publish an annual directory of physicians licensed to practice medicine in this state. The directory shall include for each physician the physician's name, practice location, telephone number, area of specialization, professional board certification status, and information whether the physician accepts medicare assignments. In a separate section of the directory, for those physicians who voluntarily submit the necessary information on a uniform form to be supplied by the department of health, the directory must include a schedule of fees charged for services representative of the physician's type of practice and specialization, including the physician's usual fees for brief service - new patient, limited service - new patient, intermediate service - new patient, brief service - established patient, limited service - established patient, intermediate service - established patient, comprehensive history - physical, house call - established patient, and up to five other services that the physician may wish to include.

SECTION 4. Administrative authority of health care data committee - Administrative support - Authority to acquire data. The health care data committee may adopt rules consistent with and necessary for the implementation of this Act. The committee shall establish working arrangements among other state agencies for the assurance of patient confidentiality, the sharing of information, and the coordination, analysis, and dissemination of health care data to the public and to the state agencies in making more cost-effective health care purchasing decisions. The committee may require insurers, nonprofit health service corporations, health maintenance organizations, and state agencies to provide data required for the performance of the duties of the committee under this Act.

SECTION 5. Confidentiality of certain records - Immunity for providing information. The committee shall keep all records, data, and information that could be used to identify individual patients confidential. Reports for distribution by the committee or for publication must be prepared in a manner to reasonably assure exclusion of information that would identify any particular patient. Any person who provides information, data, reports, or records with respect to any patient to the health care data committee under this

Act is immune from liability for the act of furnishing the information.

SECTION 6. Fees for providing extraordinary data or reports. The department of health may by rule set fees for recovering the reasonable costs of providing data and reports, other than those set forth in this Act, to any person. Revenues derived from the fees must be deposited in the operating fund of the department of health.

SECTION 7. Civil penalty. Any person violating this Act or violating any rule adopted by the health care data committee is subject to a civil penalty not to exceed five hundred dollars per day of violation. The department of health with the assistance of the attorney general may prosecute an action in district court to recover any civil penalty under this Act.

Approved April 1, 1987
Filed April 2, 1987

CHAPTER 293

SENATE BILL NO. 2336
(Senators Waldera, Mushik)
(Representatives Wentz, J. DeMers)

ADULT PROTECTIVE SERVICES DEMONSTRATION PROJECT

AN ACT to provide for the establishment of an adult protective services demonstration project to be developed and managed by the department of human services; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Abuse" means the willful and unjustifiable infliction of pain, injury, or mental anguish, or the deprivation of food, shelter, clothing, health care, or other necessary services.
2. "Department" means the department of human services.
3. "Exploitation" means the wrongful use of a vulnerable adult or the property of a vulnerable adult.
4. "Neglect" means the inability or the negligent failure of a person to supply a vulnerable adult with food, shelter, clothing, health care, supervision, or other necessary services.
5. "Self-neglect" means the inability of a vulnerable adult to provide food, shelter, clothing, health care, or services necessary to maintain the adult's mental or physical health.
6. "Vulnerable adult" means an adult who is impaired because of mental illness, developmental disability, physical illness or disability, or chronic use of drugs or alcohol to the extent that the adult is unable or unlikely to report to or seek the help of proper authorities in situations of abuse, neglect, self-neglect, or exploitation.

SECTION 2. Adult protective service demonstration program. The department shall develop, design, and manage the adult protective service demonstration program. No state funds may be expended for the development, design, or management of the adult protective service demonstration program. However, the department may apply for and accept any funds, gifts, or grants made available for the program by any agency or department of the federal government or any private agency or individual. The department shall involve other agencies and associations in the development of the demonstration program. The department shall develop the adult protective service demonstration program pursuant to these objectives:

1. Identification of the number of vulnerable adults in the project area who are abused, neglected, exploited, or in a state of self-neglect.
2. Identification of basic and emergency services necessary for vulnerable adults.
3. Identification of existing services available to vulnerable adults.
4. Identification of services not being provided to vulnerable adults in the project area.
5. Development of cost estimates and the design of a statewide model for the delivery of services to vulnerable adults.

SECTION 3. Reporting and investigations. The department shall encourage the voluntary reporting of the abuse, neglect, self-neglect, and exploitation of vulnerable adults and shall implement policies for the receipt and investigation of reports made to the department.

SECTION 4. Immunity from liability. Any person, other than the alleged violator, participating in good faith in the making of a report, conducting an investigation, or taking photographs or x-rays in connection with a report made pursuant to this Act, is immune from any civil or criminal liability that might otherwise result.

SECTION 5. APPROPRIATION. There is hereby appropriated to the department of human services any moneys that may become available pursuant to section 2 of this Act for the purpose of developing, designing, and managing the adult protective service demonstration program for the biennium beginning July 1, 1987, and ending June 30, 1989.

SECTION 6. EXPIRATION DATE. This Act is effective through June 30, 1989, and after that date is ineffective.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 294

SENATE BILL NO. 2372
(Senators Mathern, Dotzenrod)
(Representatives C. Nelson, Gorman)

ABANDONED BURIAL PLOTS

AN ACT to create and enact a new section to chapter 23-06 of the North Dakota Century Code, relating to reversion of title to burial plots after abandonment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Title to burial plots reverts after sixty years - Procedure - Abandonment. Any entity owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies may use the procedures in this section to reinvest itself with the title to a portion of a cemetery which was conveyed by deed to a person but which has not been used for purposes of burial for more than sixty years.

1. The entity owning, conducting, or maintaining a cemetery may pass a resolution demanding that the owner of a portion of a cemetery which has been unused for more than sixty years express an interest in the cemetery plot. The entity must personally serve a copy of its resolution on the owner in the same manner as personal service of process in a civil action. The resolution must notify the owner that the owner must, within sixty days after service of the resolution on the owner, express an interest in retaining the unused cemetery plot.
2. If the owner of the unused plot cannot personally be served with a copy of the resolution of the entity because the owner cannot be found in this state or for any other valid reason, the entity must publish its resolution for three consecutive weeks in the official newspaper of the county where the cemetery is located and must mail a copy of the resolution within fourteen days after the third publication to the owner's last known address.

3. If within sixty days after personal service or after publication of the board's resolution is completed, the owner or person with a legal interest in the cemetery plot fails to express an interest in retaining the unused cemetery plot, the owner's rights are terminated and title to that person's plot reverts to the entity owning, conducting, or maintaining the cemetery.
4. It is a conclusive presumption that an owner has abandoned a cemetery plot if for a period of more than sixty years the owner has not used any portion of the lot for purposes of burial and has not made provision for care of the lot beyond that provided uniformly to all lots within the cemetery and if the owner has failed to express an interest in retaining the cemetery plot after notice provided in this Act.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 295

HOUSE BILL NO. 1522
(Tomac)

GRAVE OPENING

AN ACT to amend and reenact section 23-06-27 of the North Dakota Century Code, relating to opening any grave or place of burial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-27 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-27. **Unlawfully opening place of burial - Penalty - Exceptions.** A person is guilty of a class C felony who, without authority of law, opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove the dead body of a human being, or any part thereof; or
2. To steal the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles buried with the same.

This section does not apply to the inadvertent opening of burial mounds, unregistered historic graves, prehistoric graves, or prehistoric cemeteries when such remains would not appear to a reasonable person to be human, or when the state department of health and the state historical board have been notified of such discovery and such unregistered human remains shall be studied and reinterred pursuant to rules adopted by the state department of health and the state historical board. This section also does not apply to situations in which the state department of health and the state historical board are notified of the need to disinter and move prehistoric human remains which are recorded with the state historical board in order to prevent the destruction of such graves by actions including, but not limited to, the construction of highways, dams, reservoirs, coal mines, power generation and transmission facilities, pipelines, farming practices, and other developments. Where feasible, such developments should avoid disturbance of prehistoric graves. In these situations such recorded human remains must be studied and reinterred pursuant to rules adopted by the state department of health and the state historical board.

Approved March 19, 1987
Filed March 20, 1987

CHAPTER 296

SENATE BILL NO. 2292
(Senators Lashkowitz, David)
(Representative Oban)

ANATOMICAL GIFT REQUESTS

AN ACT to create and enact a new section to chapter 23-06.1 of the North Dakota Century Code, relating to establishing procedures for the request of anatomical gifts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Request for consent to an anatomical gift - Protocol - Exceptions. When death occurs, or is deemed to be imminent, in a hospital to a patient who has not made an anatomical gift, the hospital administrator or a designated representative, other than a person connected with the determination of death, shall request the person described in subsection 2 of section 23-06.1-02, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication by the decedent or one in a prior class, to consent to the gift of organs of the decedent's body as an anatomical gift. The hospital must develop a protocol to include the training of employees or other persons designated to make the request, the procedure to be followed in making it, and a form of record identifying the person making the request, and the response and relationship to the decedent. The protocol must encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding anatomical gifts.

If, based upon medical criteria, a request would not yield an anatomical gift which would be suitable for use, there is an authorized exception to the request required by this section.

If, based upon the attending physician's special and peculiar knowledge of the decedent or the circumstances surrounding the death of the patient, the attending physician determines that a request will not be made for an anatomical gift, that determination must be noted in the patient's medical record. Such a determination is an exception to the request required by this section.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 297

HOUSE BILL NO. 1132
(Committee on Transportation)
(At the request of the Highway Department)

PHYSICAL OR MENTAL DISORDER REPORTS

AN ACT to amend and reenact section 23-07-01.1 of the North Dakota Century Code, relating to the agency to which certain physical and mental disorders must be reported.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-01.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-01.1. Reporting of physical or mental disorders. The state department of health shall define disorders characterized by lapses of consciousness, gross physical or mental impairments for the purposes of the reports hereinafter referred to:

1. All physicians may report immediately to the state ~~department of health~~ highway department in writing, the name, date of birth and address of every person fourteen years of age or over coming before him for examination, attendance, care or treatment when there is reasonable cause to believe that such person due to physical or mental reason is incapable of safely operating a motor vehicle or diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments.
2. ~~The state department of health shall report to the state highway commissioner the name, birth date and address of every person reported under the provisions of subsection 1. Such reports to be furnished to the state highway commissioner upon receipt.~~
- 3- Such reports as required in this section shall be for the information of the state ~~department of health and the~~ state highway commissioner in determining the eligibility of any person to operate a motor vehicle on the highways of this state and shall be kept confidential and not

divulged to any person or used as evidence in any trial, except that the reports may be admitted in proceedings under sections 39-06-33 and 39-06-39.

- 4- 3. The physician-patient privilege provided for by rules 501 and 503 of the North Dakota Rules of Evidence may not be asserted to exclude evidence regarding the mental or physical incapacity of a person to safely operate a motor vehicle in the reports as required under the provisions of this section.
- 5- 4. Any physician who fails to make a report or who in good faith makes a report, gives an opinion or recommendation pursuant to this section or participates in any proceeding founded upon this section shall be immune from any liability, civil or criminal, that might otherwise be incurred, as a result of such report, except for perjury.

Approved March 12, 1987

Filed March 16, 1987

CHAPTER 298

HOUSE BILL NO. 1304
(Representatives Graba, Schneider, Frey)
(Senator Ingstad)

INFECTIOUS DISEASE EXPOSURE

AN ACT to provide for notification of firemen and emergency medical technicians after exposure to infectious diseases; and to amend and reenact subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code, relating to definition of diseases fairly traceable to employment under the workmen's compensation law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 and 2 of this Act, unless the context or subject matter otherwise requires:

1. "Emergency medical technician" means a person trained and authorized by law or rule to render emergency medical assistance or treatment.
2. "Infectious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold.
3. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.

SECTION 2. Notification of infectious diseases. A licensed facility, medical clinic, or physician's office that receives a patient who is subsequently diagnosed as having an infectious disease shall notify the employer of any fireman or emergency medical technician who transported the patient to the facility, or who administered care to the patient during transportation, of the employee's exposure to the infectious disease. The notification must be made within forty-eight hours of confirmation of the diagnosis. The employer shall request the employee to contact the licensed facility to determine the infectious disease to which the employee has been exposed and to receive the appropriate medical direction for dealing with the infectious disease. Notification

must be conducted in a manner that protects the confidentiality of the patient and fireman and emergency medical technician.

* SECTION 3. AMENDMENT. Subdivision d of subsection 12 of section 65-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Provided However, any condition or impairment of health of a full-time paid fireman or law enforcement officer caused by lung or respiratory disease, hypertension, or heart disease, or exposure to infectious disease as defined by sections 1 and 2 of this Act, resulting in total or partial disability or death shall be is presumed to have been suffered in the line of duty and shall. The condition or impairment of health may not be attributed to any disease existing prior to such before that total or partial disability or death unless the contrary be is shown by competent evidence, provided, further, that such. A full-time paid fireman or law enforcement officer shall have is not eligible for the benefit provided under this subdivision unless that full-time paid fireman or law enforcement officer has completed two years of continuous service and have has successfully passed a physical examination which examination fails to reveal any evidence of such a condition.

Approved March 27, 1987

Filed March 30, 1987

* NOTE: Section 65-01-02 was also amended by section 1 of House Bill No. 1303, chapter 750.

CHAPTER 299

SENATE BILL NO. 2553
(Senator Mushik)
(Representative Kretschmar)
(Approved by the Committee on Delayed Bills)

LIMITED RESTAURANT LICENSES

AN ACT to amend and reenact sections 23-09-01, 23-09-16, and 23-09-17 of the North Dakota Century Code, relating to hotels, lodginghouses, restaurants, and boardinghouses and to limited restaurant licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Hotel" or "motel" includes every building or structure, or any part thereof, kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public for periods of less than one week, whether such accommodations are furnished with or without meals.
2. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished and includes a limited restaurant restricted to a specified menu.
3. "Lodginghouse" includes every building or structure, or any part thereof, with accommodations for four or more persons, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished to regular roomers for one week or more.
4. "Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or

* NOTE: Section 23-09-01 was also amended by section 27 of Senate Bill No. 2278, chapter 263.

held out to the public as a place where food is furnished to regular boarders for periods of one week or more.

5. "Proprietor" includes the person in charge of a restaurant, hotel, boardinghouse, or lodginghouse, as the case may be, whether as owner, lessee, manager, or agent.

SECTION 2. AMENDMENT. Section 23-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-16. License - Application. Before any hotel, lodginghouse, restaurant, or boardinghouse may be operated in this state, it must be licensed by the state laboratories department. A limited restaurant license may be issued by the department to a licensee and a limited restaurant is restricted to a specified menu. The department may adopt rules relating to limited restaurants. Application for license shall be made to the department during December of every year, or prior to the operating of the hotel, restaurant, lodginghouse, or boardinghouse, as the case may be. Such application shall be in writing on forms furnished by the department, and shall be accompanied by the required fee.

SECTION 3. AMENDMENT. Section 23-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09-17. License fees. The following annual license fees shall be paid to the state laboratories department by proprietors of hotels, restaurants, boardinghouses, and lodginghouses:

1. For a restaurant, limited restaurant, or boardinghouse, ~~five~~ ten dollars.
2. For a hotel or lodginghouse containing at least four but not more than ten sleeping rooms, five dollars.
3. For a hotel or lodginghouse containing more than ten sleeping rooms and not more than twenty sleeping rooms, ten dollars.
4. For a hotel or lodginghouse containing more than twenty sleeping rooms and not more than fifty sleeping rooms, twenty dollars.
5. For a hotel or lodginghouse containing fifty-one sleeping rooms or more, forty dollars.

The department shall waive all or a portion of the license fee for any restaurant, limited restaurant, or boardinghouse that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department.

Approved April 14, 1987
Filed April 15, 1987

CHAPTER 300

HOUSE BILL NO. 1373
(Representatives Oban, Lindgren, W. Williams)
(Senators Heinrich, Nalewaja)

MOBILE HOME PARK EMERGENCIES

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to a requirement for a procedure to respond to emergencies and complaints in certain mobile home parks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Requirement of response procedures in certain mobile home parks. The owner of a mobile home park that contains at least ten mobile homes shall establish a procedure for responding to emergencies and complaints by tenants with respect to the mobile home park. The procedure must include the ability to reach a person who has the authority to perform, or direct the performance of, duties imposed on the owner under this chapter. The procedure must be in writing and a copy must be provided to the tenants.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 301

HOUSE BILL NO. 1272
 (Representatives Rydell, L. Hanson, Koland)
 (Senators Bakewell, Stromme, Shea)

PUBLIC SMOKING RESTRICTIONS

AN ACT to create and enact two new sections to chapter 23-12 of the North Dakota Century Code, relating to enforcement of public smoking restrictions; and to amend and reenact sections 23-12-09, 23-12-10, and 23-12-11 of the North Dakota Century Code, relating to designated smoking areas in places of public assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-09. Smoking in places of public assembly - Definitions. As used ~~in In~~ sections 23-12-09 through 23-12-11, "~~place of public assembly~~" means unless the context or subject matter otherwise requires:

1. "Place of public assembly" means:

- a. Enclosed theaters, except the lobby; auditoriums; gymnasiums; elevators; libraries; vehicles used in public transportation; rooms in which persons are confined as a matter of health care, including but not limited to the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care institution or facility, except the room in a health care facility serving as the residence of the person living in such facility and waiting areas in all public transportation terminals.
- 2- b. All buildings and Any building or other enclosed structures structure owned or leased by the state, its agencies, or political subdivisions, including but not limited to hospitals and state institutions for the mentally retarded and the mentally ill, and all public education buildings, except rooms within these buildings used primarily as the residences of students or other persons affiliated with the university or

college, office buildings, libraries, and vehicles used in public transportation.

- 3- c. Each portion of a building or enclosed structure that is not included in this subsection 1 or 2 is a place of public assembly if it has the seating capacity for fifty or more persons and is available to the public, including but not limited to restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, regardless of whether the establishments serve alcoholic beverages.

The term does not include private, enclosed rooms of residence, establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises, including private and fraternal organizations, or areas used for the service of alcoholic beverages and which are physically separate rooms within food service establishments.

2. "Smoke-drift" means the presence of smoke from a lighted cigar, cigarette, pipe, or other smoking equipment in a place of public assembly outside a designated smoking area.
3. "Smoking" means carrying a lighted cigar, cigarette, pipe, or any other lighted smoking equipment.

SECTION 2. AMENDMENT. Section 23-12-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-10. Nonsmoking Designation of smoking areas designated. For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of the persons not smoking, in every place of public assembly there shall be is an area where smoking is not permitted, which shall be outside of designated a no-smoking area. The designation shall be made by the person with general supervisory responsibility over the place of public assembly before the place of public assembly is next or first made available to the public after July 1, 1977 smoking areas. Smoking areas must be designated by the proprietor or other person with general supervisory responsibility over the place of public assembly, except in a place in which smoking is prohibited by the state fire marshal, by other governing law, rule, or ordinance, or by corporate or private policy. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking

area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

SECTION 3. A new section to chapter 23-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Responsibility of proprietors. The proprietor or other person with general supervisory responsibility over a place of public assembly shall post an appropriate sign in any designated smoking area.

SECTION 4. A new section to chapter 23-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Complaints and enforcement. The state department of health is designated to receive reports or complaints from any person regarding violations of sections 23-12-09 through 23-12-11. State agencies with statutory jurisdiction over places of public assembly may enforce sections 23-12-09 through 23-12-11. These agencies include the fire marshal department, laboratories department, department of health, department of human services, and director of institutions. The agencies may mutually agree as to the manner in which enforcement is to be accomplished, and may amend their administrative rules to ensure compliance with sections 23-12-09 through 23-12-11.

Authorities other than state agencies may conduct inspections and report violations to state agencies, or enforce smoking policies, rules, or ordinances more stringent than those contained in sections 23-12-09 through 23-12-11.

SECTION 5. AMENDMENT. Section 23-12-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-12-11. Penalty. Any proprietor or other person who shall smoke in an area designated for nonsmoking as provided in with general supervisory responsibility over a place of public assembly who willfully fails to comply with sections 23-12-09 through 23-12-11, or who has general supervisory responsibility and fails to designate a nonsmoking area, shall be and section 3 of this Act is subject to a fine not to exceed one hundred dollars per violation.

Approved April 4, 1987
Filed April 6, 1987

CHAPTER 302

SENATE BILL NO. 2394
(Todd, Nelson)

SMOKE DETECTORS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to duties of landlords and tenants with respect to smoke detectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-13-15. Smoke detection systems for residential rental property - Penalty. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. The landlord may require the tenant to sign a certificate stating that the system is in proper working condition, on taking occupancy, if that is the case. The tenant is responsible for maintaining the system during the tenant's occupancy.

Nothing in this section shall be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.

Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 303

SENATE BILL NO. 2240
(Committee on Political Subdivisions)
(At the request of the Attorney General)

FIRECRACKER COMPOSITION

AN ACT to amend and reenact subsection 9 of section 23-15-01 of the North Dakota Century Code, relating to composition of firecrackers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 23-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Soft shell firecrackers not to exceed one and one-half inches [38.1 millimeters] in length and one-fourth inch [6.35 millimeters] in diameter; total pyrotechnic composition not to exceed ~~two grains~~ fifty milligrams each in weight.

Approved March 12, 1987
Filed March 16, 1987

CHAPTER 304

SENATE BILL NO. 2191
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Health)

HOSPITAL EXPANSION CERTIFICATE OF NEED

AN ACT to amend and reenact sections 23-17.2-01, 23-17.2-02, 23-17.2-03, 23-17.2-04, 23-17.2-05, and 23-17.2-09 of the North Dakota Century Code, relating to the certificate of need for expansion of hospital facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-17.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-01. Review and evaluation of proposed capital expenditures, new ~~institutional~~ or expanded health services, and major medical equipment by or on behalf of a health care facility or service - Public interest. It is declared to be the public policy of this state:

1. That the capital expenditures, new ~~institutional~~ or expanded health services, and acquisition of major medical equipment by or on behalf of health care facilities ~~and health care services~~ shall be accomplished in a manner which is orderly, economical, and consistent with the effective development of necessary and adequate means of providing for the health care of the people of North Dakota, and ~~to avoid a~~ which avoids wasting of health care dollars.
2. That the general welfare and the protection of the lives, health, and property of the people of this state require that the type, level, and kind of care ~~needed in~~ proposed to be offered resulting from capital expenditures, new ~~institutional~~ or expanded health ~~service~~ services, and acquisition of major medical equipment by or on behalf of health care facilities ~~and services within this state~~ be subject to review and evaluation in order that proper facilities are made available for such ~~care, within the economic means of this state, the type, level, and kind of care necessary for~~ the continued well-being and comfort of

the patients of such health care facilities and ~~services and to ensure that capital expenditures, new institutional health services, and acquisition of major medical equipment by or on behalf of~~ in order that such health care facilities are not expanded which to exceed the needs of patients or of persons in the area to be served or to exceed the economic means of this state.

SECTION 2. AMENDMENT. Section 23-17.2-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-02. Definitions. As used in this chapter, unless otherwise indicated by the context:

1. "Ambulatory surgical facility" means a facility licensed ~~pursuant to the under~~ North Dakota Administrative Code chapter 33-03-01.
2. "Appearance" ~~shall mean~~ means a notice in writing filed by any interested person notifying the health council of ~~his~~ that person's interest in any application pending under this chapter.
3. "Bed capacity" means space as defined by the department ~~pursuant to regulations promulgated under rules adopted in the~~ department's licensing programs for inpatient facilities.
4. "Capital expenditure" means an expenditure ~~of seven hundred fifty thousand dollars,~~ regardless of the financial mechanism utilized, made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.
5. "Construction" means any erection of a new building, new addition to, modification, alteration, renovation, conversion of any existing building, modernization or improvement made by or on behalf of any health care facility. Construction shall not include changes required by state or federal health and safety regulatory agencies.
6. "Department" means the North Dakota state department of health.
7. "Expenditure minimum"; ~~when used in connection with annual operating costs,~~ means three hundred thousand dollars.
8. "Health care facility" means those health care facilities licensed by the department or certified by the department ~~pursuant to under~~ the federal Social Security Act as amended and so listed in department rules under North Dakota Administrative Code article 33-09 such as including

but not limited to hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but not including clinical laboratories which under title XVIII of the federal Social Security Act meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.

- 9- 8. "Health council" means the state health council of the North Dakota state department of health.
- ~~10-~~ 9. "Health maintenance organization" means a public or private organization, organized under the laws of this state and as defined in North Dakota Administrative Code article 33-09 section 26.1-18-01.
- ~~11-~~ 10. "Health services" means institutionally related (i.e. diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.
- 12- "Health systems agency" means a conditionally or fully designated health systems agency designated pursuant to section 1515 of the National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641 as amended) and Title 42, Code of Federal Regulations-
- 13- "Incremental operating costs" means the financial requirements necessary to operate an activity associated with capital expenditures for new institutional health services and operating costs associated with the acquisition of major medical equipment. Operating costs are calculated in accordance with department regulations-
- ~~14-~~ 11. "Incurring an obligation" means an obligation for a capital expenditure by or on behalf of a health care facility if any of the following apply:
- a. When a A contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or.
 - b. When the The governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or.
 - c. In the case of donated property, on the date on which the gift is completed under applicable state law.
- ~~15-~~ 12. "Inpatient" means a patient who has been formally admitted at least overnight to a hospital or other health facility which is responsible for his the patient's room and board

for the purpose of receiving diagnostic or other health services.

- ~~16-~~ 13. "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs more than five hundred thousand dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than five hundred thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.
14. "Operating costs" means the financial requirements necessary to effect a proposed activity or health service which under generally accepted accounting principles is not properly capitalized.
- ~~17-~~ 15. "Patient" means a person who is suffering from mental illness, acute or chronic illness or injury, or who is convalescent and who is in need of medical and nursing care on a continuing basis, or who is in need of obstetrical or other medical or nursing care.
- ~~18-~~ 16. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency as stated herein.
- ~~19-~~ 17. "Public body" means the state of North Dakota, and any county or municipal corporation.
- ~~20-~~ 18. "Public funds" shall include all funds derived from taxation, fees, penalties, sale of bonds, or from any other source which belong to and are the property of a public corporation or of the state, and all sinking funds of such public corporations and for whatever purpose to be expended of which a public corporation or the state shall have legal custody. They shall include the funds of which any board, bureau, commission, or individual, created or authorized by public and state law, is authorized to have control as the legal custodian for any purpose whatsoever, whether such funds were derived from general or special

taxation or the assessment of persons or corporations for a specific purpose.

- 21- 19. "Public institution" means any hospital or related medical facility under the establishment and control of any public body.
- 22- 20. "State health plan" means the document prepared and reviewed and revised as necessary (but at least annually) by the statewide health coordinating council pursuant to section 1524 of the National Health Planning and Resources Development Act of 1974 {Pub. L. 93-641 as amended} by the health council.
- 23- "Statewide health coordinating council" means the body established pursuant to section 1524 of the National Health Planning and Resources Development Act of 1974 {Pub. L. 93-641 as amended} to advise the department with regard to provisions of that Act.

SECTION 3. AMENDMENT. Section 23-17.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-03. Scope of coverage of certificate of need program - Health maintenance organization exception. The certificate of need program required under this chapter provides for the following:

1. The department, pursuant to this chapter and rules of the health council, must review proposals subject to this chapter and must approve, disapprove, or revoke the certificate of need, as appropriate. The certificate of need program applies to:
 - a. The obligation by or on behalf of a health care facility of any capital expenditure of seven hundred fifty thousand dollars or more (other than to acquire an existing facility). The capital expenditure must include the costs of designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment.
 - b. The addition or expansion of a health care service by or on behalf of a health care facility which was not beyond that which was offered within the previous twelve-month period before the month in which the health service would be offered which is associated with either a capital expenditure or and entails an annual operating cost of at least three hundred thousand dollars; or the termination of a health service which is associated with any effected by a capital expenditure of seven hundred fifty thousand dollars or more.

- c. The acquisition by any person of major medical equipment that will be owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more. In determining whether major medical equipment costs more than five hundred thousand dollars, the cost of designs, plans, working drawings, specifications, and other activities essential to placement, to acquiring the equipment and making it operational must be included. If the equipment is acquired at less than fair market value, the term "cost" includes the fair market value.
- d. The acquisition by any person of major medical equipment not owned by or located in a health care facility the capital expenditure for which is five hundred thousand dollars or more or the annual operating cost for which is three hundred thousand dollars or more, if the department finds that the equipment will be used primarily to provide services to persons who are admitted patients in a health care facility. This does not include use of equipment on a temporary basis as in the case of a natural disaster, a major accident, or equipment failure.
- e. The obligation of a capital expenditure of seven hundred fifty thousand dollars or more by any person to acquire an existing health care facility if a notice of intent is not received at least thirty days prior to entering into a contract for the obligation or the department finds that the services or bed capacity of the facility will be changed.
- f. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if such acquisition would have been subject to review if purchased. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would exceed the expenditure minimum have been subject to review.

However, health care facilities and health care services, for the purposes of this chapter, do not include health maintenance organizations, as defined in section 26-1-18-01, when the health maintenance organization, or other entity, is engaged in activities to determine the feasibility of developing and operating or expanding the operation of health maintenance organizations, or planning projects for the establishment of health maintenance organizations or for the significant expansion of the membership of, or areas served by, health maintenance organizations, or initial development of health maintenance organizations. "Planning projects" and

"initial development" mean those activities as defined in the Health Maintenance Organization Act of 1973, as amended [~~Pub. L. 94-460, 90 Stat. 1948, 1950, 1955; and Pub. L. 95-559, 92 Stat. 2131, 2134, 42 U.S.C. 300 e-3~~].

2. Upon a decision by the state health council to issue a certificate of need, the certificate shall specify the maximum amount of capital expenditures which may be obligated under such certificate.
3. The state health council shall prescribe by regulation rule the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.
4. Any state agency construction project subject to the provisions of this chapter, the determination of need established through legislative procedure, finalized by appropriation, shall be accepted by the state health council without any formal reviews.

SECTION 4. AMENDMENT. Section 23-17.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-04. Certificate of need.

1. No person, subject to the scope of coverage under section 23-17.2-03, shall incur a capital expenditure or institute or expand a new health service or acquire major medical equipment without first obtaining a certificate of need.
2. Each decision of the department (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the state health plan and other criteria promulgated by the state health council, except in emergency circumstances that pose an imminent threat to public health.
3. Subsequent reviews. A proposed change in a project associated with a capital expenditure for which the state health council has previously issued a certificate of need will require review if the change is proposed within one year after the date the activity for which the expenditure was approved is undertaken. This applies to changes associated with capital expenditures that were subject to review under this chapter. A review is required under this chapter whether or not a capital expenditure is associated with the proposed change.
4. Existing facilities. If a person acquires an existing health care facility without a certificate of need and

proposes to change within one year after the acquisition the services or bed capacity of the facility, the proposed change must be reviewed if it would have required review under this chapter.

- 5- Leases, donations, and transfers. An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under this chapter if made by purchase. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review.
- 6- In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the certificate of need program applies only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services.

SECTION 5. AMENDMENT. Section 23-17.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-05. Health council to promulgate adopt rules and regulations - Application - Criteria for certification. The health council is hereby empowered to promote and execute the purposes contemplated by this chapter including but not limited to the following activities:

1. The development of an application form.
2. The promulgation of such rules and regulations as may be required for Pub. L. 93-641 as amended.
- 3- The establishment of criteria for review as required by Pub. L. 93-641 as amended.
- 4- 3. The establishment of roles of the department, state health coordinating council, and health system agencies in the administration of the certification program as may be required for Pub. L. 93-641 as amended.
- 5- 4. The establishment of schedules for submitting applications, types of reviews as well as time frames and limitations.
- 6- 5. Purview determinations with regard to all of the following:

- a. Obligations of capital expenditures;_
- b. The offering of new ~~institutional~~ or expanded health services;_ and_
- c. The acquisition of major medical equipment.

7- 6. When The use of special reviews will be utilized because of due to special circumstances found with respect to proposals subject to this chapter.

~~The health council shall seek the advice of the health systems agencies in these activities.~~

* SECTION 6. AMENDMENT. Section 23-17.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-17.2-09. Application for certificate of need. Applicants for certificate of need shall file notification of intent and applications under oath with the department upon forms prescribed. Notification of intent and applications shall be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a public institution by the head of such governmental unit or agency having jurisdiction over it. Notification of intent and applications shall set forth the full name and address of the owner of the institution for which certificate of need is sought, the names of the persons in control thereof, and such additional information as the department may require including affirmative evidence of ability to comply with licensing or certification requirements when ~~proposel~~ implemented. Applicants shall comply with criteria of rules and ~~regulations~~ as set forth therein. The department shall consider the application and determine from its findings whether such application qualifies the applicant for certification of need under criteria as set forth in the rules and ~~regulations~~. The determination shall be made after receipt of ~~recommendations~~ from the health systems agency in which the applicant is located and the determination shall be communicated to the facility or its owners or operators, the ~~respective health systems agency~~, and all persons filing an appearance immediately after being made. A notice of intent must be filed with the department when a health care facility is ~~acquired~~.

Approved April 1, 1987

Filed April 2, 1987

* NOTE: Section 23-17.2-09 was also amended by section 7 of House Bill No. 1006, chapter 6.

CHAPTER 305

HOUSE BILL NO. 1099
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Health)

RADIATION INFORMATION

AN ACT to create and enact a new section to chapter 23-20.1 of the North Dakota Century Code, relating to confidentiality of information regarding ionizing radiation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Confidentiality of records. Any record, report, or information obtained under this chapter must be available to the public unless confidentiality is requested in writing to the department, a notice of opportunity for public hearing pursuant to chapter 28-32 is issued by the department in regard to the request, and a satisfactory showing made to the department that confidentiality be granted. Information will only be deemed confidential by the department if it:

1. Is required in order to protect trade secrets, or
2. Is required in order to protect medical and individual radiation exposure files, the disclosure of which would constitute a clear invasion of personal privacy.

In the event of a satisfactory showing, the department shall consider the record, report, information, or portion thereof, confidential in the administration of this chapter. Nothing in this section may be construed to prevent disclosure of any report or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local laws, or when relevant in any proceeding under this chapter. Air emissions data, discharges to the land, discharges to surface and ground waters, and the location and identification of any waste materials may not be construed as confidential information.

Approved March 27, 1987
Filed March 30, 1987

CHAPTER 306

HOUSE BILL NO. 1245
(Committee on Natural Resources)
(At the request of the Department of Health)

UNDERGROUND STORAGE

AN ACT to create and enact sections 23-20.3-04.1 and 23-20.3-04.2 of the North Dakota Century Code, relating to establishing an underground storage tank program; and to amend and reenact sections 23-20.3-01, 23-20.3-02, 23-20.3-03, 23-20.3-04, subsection 2 of section 23-20.3-05, sections 23-20.3-06, 23-20.3-07, 23-20.3-08, and 23-20.3-10 of the North Dakota Century Code, relating to hazardous waste management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-20.3-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-01. Declaration of purpose. It is hereby declared to be the purposes of this chapter to:

1. Protect human health and the environment from the effects of the improper, inadequate, or unsafe past or present management of hazardous waste and underground storage tanks.
2. Establish a program to regulate hazardous waste from the time of generation through transportation, storage, treatment, and disposal.
3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as preferable alternatives to landfill disposal.
4. Assure the safe and adequate management of hazardous waste with a minimum of hazardous waste disposal sites within the state.
5. Establish a program to regulate underground storage tanks.

6. Promote reduction of surface and ground water contamination resulting from leaking underground storage tanks.

* SECTION 2. AMENDMENT. Section 23-20.3-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-02. Definitions. When used in this chapter:

1. "Department" means the North Dakota state department of health charged with the administration and enforcement of this chapter.
2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.
3. "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.
4. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.
5. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity.
6. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
7. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of

* NOTE: Section 23-20.3-02 was also amended by section 1 of Senate Bill No. 2547, chapter 307.

hazardous waste during its transportation from the site of generation to the site of storage, treatment, or disposal.

8. "Owner" means, in the case of an underground storage tank:
- a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
 - b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use.
9. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, or other legal entity, state, municipality, commission, political subdivision of a state, interstate body, or federal department, agency, or instrumentality.
10. "Regulated substance" means:
- a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act, as amended.
 - b. Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds [6.66 kilograms] per square inch [6.45 square centimeters] absolute).
11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
- ~~9-~~ 12. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
- ~~10-~~ 13. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
- ~~11-~~ 14. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical,

chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such wastes nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

- ~~12-~~ 15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility where hazardous waste has been generated.
16. "Underground storage tank" means any one or combination of underground tanks, including underground pipes connected to an underground tank, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations adopted under this chapter include:
- a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes.
 - b. Tanks used for storing heating oil for consumptive use on the premises where stored.
 - c. Septic tanks.
 - d. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
 - e. Surface impoundments, pits, ponds, or lagoons.
 - f. Storm water or wastewater collection systems.
 - g. Flow-through process tanks.
 - h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
 - i. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or

tunnel if the storage tank is situated upon or above the surface of the floor.

- 13- 17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Clean Water Act, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977.

SECTION 3. AMENDMENT. Section 23-20.3-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-03. Powers and duties of the department. The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state hazardous waste management program and underground storage tank programs pursuant to provisions of this chapter.
2. Survey hazardous waste generation and management practices in the state.
3. Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing the management of hazardous waste and underground storage tanks.
4. Enter into agreements or letters of understanding with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks in order to promote consistency in enforcement and to avoid duplication in regulation.

SECTION 4. AMENDMENT. Section 23-20.3-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-04. Hazardous waste regulations. Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, promulgate and may revise as appropriate:

1. Regulations for determining whether any waste is hazardous.
2. Regulations which prescribe procedures for generators of hazardous waste.
3. Regulations for the issuance of permits for the storage, treatment, and disposal of hazardous waste in an environmentally sound manner, utilizing best scientific and engineering judgment.
- 3- 4. Regulations providing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny such permits as may be required by this chapter. The regulations shall provide that no permit shall be revoked until the department has provided the affected party with written notice of the intent of the department to revoke the permit and the reasons for such revocation and with an opportunity for a hearing.
- 4- 5. Regulations for the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.
- 5- 6. Regulations for the transportation, containerization, and labeling of hazardous wastes, which shall be consistent with those issued by the United States department of transportation and the North Dakota public service commission and the North Dakota motor vehicle department.
- 6- 7. Regulations providing procedures and requirements for a manifest system.
- 7- 8. Regulations which prescribe procedures and requirements for the following:
 - a. Recordkeeping.
 - b. Reporting.
 - c. Sampling.
 - d. Performing analysis.
 - e. Monitoring.
- 8- 9. Regulations requiring that the owner or operator of any hazardous waste treatment, storage, or disposal facility demonstrate evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to human health and the environment.

- 9- 10. Any other regulations necessary to carry out the purposes of this chapter.

SECTION 5. Section 23-20.3-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-20.3-04.1. Underground storage tank regulations. Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, adopt:

1. Regulations for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. Regulations for maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. Regulations for reporting of any releases and corrective action taken in response to a release from an underground tank.
4. Regulations for taking corrective action in response to a release from an underground storage tank.
5. Regulations for the closure of tanks to prevent future releases of regulated substances into the environment.
6. Regulations for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Regulations establishing standards for installation of new underground storage tanks.
8. Regulations establishing standards for construction and performance of new underground storage tanks.
9. Regulations for notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. Regulations for a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable federal rules adopted pursuant to Public Law 98-616 [98 Stat. 3277; 42 U.S.C. 6991 et seq.].

SECTION 6. Section 23-20.3-04.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-20.3-04.2. Municipal underground storage tank ordinances. A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent than this chapter and the rules authorized to be adopted pursuant to this chapter.

SECTION 7. AMENDMENT. Subsection 2 of section 23-20.3-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made.

SECTION 8. AMENDMENT. Section 23-20.3-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-06. Inspections - Right of entry. For the purposes of developing or enforcing any rule or regulation authorized by this chapter, or enforcing any requirement of this chapter any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site where wastes or substances which the department has reason to believe may be hazardous or regulated are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.
2. Inspect and obtain samples of any waste or substance which the department has reason to believe may be hazardous or regulated, including samples from any vehicles in which wastes are being transported as well as samples of any containers or labels.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

SECTION 9. AMENDMENT. Section 23-20.3-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-07. Monitoring, analysis, and testing.

1. If the department determines, upon receipt of any information, that:
 - a. The presence of any hazardous waste, hazardous constituent, or regulated substance at a facility or site at which hazardous waste or regulated substance is, or has been, stored, treated, or disposed of; or
 - b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment,

the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.
2. In the case of any facility or site not in operation at the time a determination is made under subsection 1 with respect to the facility or site, if the department finds that the owner or operator of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste or regulated substance at such facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.
3. Anyone who violates this section shall be subject to a civil penalty of five thousand dollars per day of violation.

SECTION 10. AMENDMENT. Section 23-20.3-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-08. Imminent hazard. Upon receipt of information that the past or present handling, storage, transportation, treatment, or disposal of any waste or regulated substance may present an imminent and substantial endangerment to health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 11. AMENDMENT. Section 23-20.3-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-10. Applicability. The hazardous waste provisions of this chapter do not apply to:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production ~~of~~ of crude oil or natural gas or geothermal energy.
2. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
4. Cement kiln dust waste.

Except, that when a waste disposal site for any of the above wastes is to be closed, the owner or operator shall file a plat of the disposal site with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 20, 1987
Filed March 23, 1987

CHAPTER 307

SENATE BILL NO. 2547
(Senators Lashkowitz, Redlin, Holmberg)
(Representatives Scherber, Shaft)
(Approved by the Committee on Delayed Bills)

HAZARDOUS WASTE DISPOSAL PERMITS

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to permits for commercial facilities for hazardous waste disposal; and to amend and reenact section 23-20.3-02 of the North Dakota Century Code, relating to definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-20.3-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20.3-02. Definitions. When used in this chapter:

1. "Department" means the North Dakota state department of health charged with the administration and enforcement of this chapter.
2. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid or hazardous waste into or on any land or water including ground water.
3. "Commercial facility" means all contiguous land, structures, appurtenances, and improvements on the land used for treatment and disposal of hazardous waste received from offsite generators. Ownership of the offsite hazardous waste is different than the ownership of the processing facility and the wastes are processed for a fee or other consideration.
4. "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.

* NOTE: Section 23-20.3-02 was also amended by section 2 of House Bill No. 1245, chapter 306.

- ~~4-~~ 5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.
- ~~5-~~ 6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which (a) because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or (b) is identified by the mechanisms established in this chapter. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) toxicity, corrosivity, ignitability, or reactivity.
- ~~6-~~ 7. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
- ~~7-~~ 8. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the site of generation to the site of storage, treatment, or disposal.
- ~~8-~~ 9. "Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, or other legal entity, state, municipality, commission, political subdivision of a state, interstate body, or federal department, agency, or instrumentality.
- ~~9-~~ 10. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.
- ~~10-~~ 11. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
- ~~11-~~ 12. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such wastes nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

~~12-~~ 13. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility where hazardous waste has been generated.

~~13-~~ 14. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Clean Water Act, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, or to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977.

SECTION 2. A new section to chapter 23-20.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Commercial facility permits and ordinances. Counties and cities may issue permits for commercial facilities pursuant to section 23-20.3-05 and may enact and enforce commercial facility ordinances if the ordinances are equal to or more stringent than this chapter and the rules adopted under this chapter.

In addition to the requirements for obtaining a permit under this chapter, no person may construct, substantially alter, or operate any commercial facility nor may any person dispose of any hazardous waste without first obtaining a permit from the department and from the county, or if the commercial facility is located or proposed to be located within the territorial zoning authority of a city, the city. The department in conjunction with the governing body of the county or city where the commercial facility is located or proposed to be located shall hold a public hearing in the manner provided in subsection 8 of section 23-20.3-05.

Approved April 17, 1987
Filed April 17, 1987

CHAPTER 308

SENATE BILL NO. 2526
(Senator Yockim)
(Representative Haugen)

VECTOR CONTROL DISTRICT CHANGES

AN ACT to create and enact a new section to chapter 23-24 and a new subsection to section 23-24-01 of the North Dakota Century Code, relating to withdrawing from a vector control district and the definition of potential or emergency health hazards; and to amend and reenact subsection 4 of section 23-24-01, sections 23-24-03, 23-24-04, and 23-24-05, and subsection 1 of section 23-24-08 of the North Dakota Century Code, relating to the definition of public health vectors, orders modifying the boundaries of vector control districts, the expansion of vector control districts, boards of commissioners of vector control districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Public health vectors" means all species of mosquitoes and flies existing in such numbers as to be detrimental to human health and well-being.

SECTION 2. A new subsection to section 23-24-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Potential or emergency health hazard" means a potential or existing infestation by public health vectors that is detrimental to human health and well-being.

SECTION 3. A new section to chapter 23-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Petition for withdrawing from a vector control district - Hearing and investigation - Boundary modification. Any county, city, or township or portion of a county, city, or township may withdraw from a vector control district whenever a petition signed

by the governing body of the county, city, or township or at least twenty percent of the residents of the county, city, or township, or portion thereof, desiring to withdraw from the district, is approved by the state health council. Prior to approving a petition to withdraw from the district, the state health council shall fix a time and place for a public hearing on the petition. The place of the hearing must be convenient and accessible for a majority of the residents of the district. At least ten days prior to the date of the hearing, the state health council shall publish a notice of the hearing in at least one newspaper of general circulation in the district. Prior to the hearing the state health officer shall investigate the petition to withdraw and shall submit a report to the council. If the state health council finds that it is not feasible, desirable, or practical to allow the petitioning entity to withdraw from the district, it shall make an order denying the petition and state the reasons for its action. If the council finds that the petitioning entity is no longer benefited by being included within the boundaries of the district or if other reasons make the withdrawal of the petitioning entity desirable, proper, and necessary, it shall grant the petition and modify the boundaries of the district. No person may be a member of the board of commissioners if that person is no longer a resident of the vector control district after the boundaries have been modified. A new member must be appointed to replace any such member in the manner provided for original appointments.

SECTION 4. AMENDMENT. Section 23-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-03. Area to be included within district - How determined. The area or areas to be included in the district shall embrace contain the territory described in the petition for the creation or modification thereof. The However, the council, however upon its own motion or upon the request of the board of commissioners, shall consider and may include within the boundaries of the district, areas which may be benefited by being included therein. Upon a request by the board of commissioners to expand an existing district, the council shall hold a hearing and investigation and file any order expanding a district in a manner similar to that provided in sections 23-24-02 and 23-24-04.

SECTION 5. AMENDMENT. Section 23-24-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-04. Order establishing or modifying district. A certified copy of the order establishing or modifying a vector control district shall must be filed with the county auditor of each county within which any portion of the district lies and like copy of the order shall must be filed in the office of the secretary of state. The secretary of state shall make and issue to the council his certificate bearing the seal of the state of the due organization of such the district and shall record such the certificate and the order of the council establishing or modifying the district. Such The certificate of the secretary of state or a copy thereof

authenticated by him shall be is prima facie evidence of the organization of ~~such~~ the vector control district. Such district shall be and is hereby declared to be a governmental agency, body politic and corporate, with the authority to exercise the powers specified in this chapter or which may be reasonably implied in order to exercise such powers. The order of the council shall must specify the name or number by which ~~such~~ the vector control district shall be known.

SECTION 6. AMENDMENT. Section 23-24-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-05. Board of commissioners - Composition - Appointment - Term of office - Vacancy - Compensation. When an order of the council creating a vector control district has been filed in the office of the county auditor of a county in which ~~such~~ the district or a part of ~~such~~ the district is situated, a three-member board of commissioners of ~~such~~ the vector control district shall must be appointed as provided herein, consisting of three members by this section. Any resident freeholder in the district shall be is eligible for appointment to the board of commissioners thereof. The term of commissioners first appointed shall must be determined by lot. One commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years. The term of a commissioner shall commence on the date of appointment. If the office of a commissioner becomes vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board of commissioners whom the new commissioner replaces. Any vacancy must be filled in the manner provided for original appointments. Appointments to the board of commissioners shall must be made by the state health council with the approval of from a list of names submitted to the council by the board of county commissioners, the city governing body or township supervisors of any county, city, or township whose territory is embraced or included within said of the county containing the largest area of the vector control district. Any member of the board of commissioners may be removed upon a majority vote of the board of county commissioners that nominates members for the board of commissioners and the board of commissioners may be dissolved upon a majority vote of the board of county commissioners that nominates the members for the board. Each member shall receive the sum of thirty dollars per day while performing duties as a member of the board, or ~~such~~ a lesser sum as the board ~~itself~~ shall may determine, an allowance for meals and lodging as provided in section 44-08-04, and mileage expense reimbursement at the rate provided in section 54-06-09.

SECTION 7. AMENDMENT. Subsection 1 of section 23-24-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Take Declare, by resolution, that a potential or emergency health hazard exists and take all necessary and proper steps and measures for the eradication of public health vectors causing a potential or emergency health hazard within the district. Prior to taking ~~such~~ these measures the board shall consider technical information available to it for the purpose of determining the need for control measures and the need for specific action.

CHAPTER 309

SENATE BILL NO. 2268
(Committee on Natural Resources)
(At the request of the State Department of Health)

ASBESTOS CONTRACTORS

AN ACT to create and enact section 23-25-03.1 of the North Dakota Century Code, relating to certification of asbestos contractors and their workers; and to amend and reenact section 23-25-01 of the North Dakota Century Code, relating to definitions for purposes of air pollution control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-01. Definitions. For purposes of this chapter, the following words and phrases are defined:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination thereof.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life, or property.
3. ""Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded."
4. "~~"Emission" means a release of air contaminants into the ambient air.~~"
5. "~~"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency~~"

thereof, and any legal successor, representative agent or agency of the foregoing.

6. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
7. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means the repair, enclosure, encapsulation, removal, disposal, and inspection of friable asbestos material, and preparation of management plans for friable asbestos material.
6. "Asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any person engaged in asbestos abatement except at the person's private residence.
8. "Emission" means a release of air contaminants into the ambient air.
9. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
10. "Friable asbestos material" means any material containing more than one percent asbestos by weight that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
- 8- 11. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination thereof, which can reasonably be expected to cause or induce emissions of air contaminants.
12. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative agency, or agency of the foregoing.

SECTION 2. Section 23-25-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-25-03.1. Certification of asbestos contractors and their workers. The department is charged with the responsibility of

administering and enforcing a certification program for asbestos contractors and their workers and is given and charged with the following powers and duties:

1. To require training of and to examine asbestos contractors and their workers on safe asbestos abatement.
2. To establish standards and procedures for the certification of contractors and their workers engaging in the abatement of friable asbestos materials and to establish performance standards for asbestos abatement, such performance standards to be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act [42 U.S.C. 1868].
3. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.
4. To establish an annual fee for certifying asbestos contractors and establish examination and renewal fees for asbestos workers under section 23-25-04.2.
5. To establish indoor environmental nonoccupational air quality standards for asbestos.
6. To adopt and enforce rules as necessary for the implementation of this section.

The requirements of this section shall apply only to asbestos abatement conducted in buildings including but not limited to schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act.

Approved March 26, 1987
Filed March 30, 1987

CHAPTER 310

SENATE BILL NO. 2057
(Legislative Council)
(Interim Judiciary Committee)

EMERGENCY CARE LIABILITY

AN ACT to amend and reenact sections 23-27-04.1 and 39-08-04.1 of the North Dakota Century Code, relating to liability of certain persons who render services in an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-27-04.1. Emergency treatment rendered by officers, employees, or agents of ambulance service. No officer, employee, or agent of any ambulance service licensed to operate in this state who is an unpaid volunteer, who in good faith and in the exercise of reasonable and ordinary care, renders emergency care or services at the scene of an accident, disaster, or other emergency, shall be or in going to the scene, or en route to a treatment facility, is liable to the recipient of the emergency care or services for any civil damages resulting from any acts or omissions by the person in rendering the emergency care or services provided such the person is properly trained according to law. The provisions of this This section shall does not be construed to relieve the a person rendering emergency care from liability to the person receiving the emergency care for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

SECTION 2. AMENDMENT. Section 39-08-04.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-04.1. Emergency care at scene of accident - Liability. Any person who is an unpaid volunteer, who in good faith, shall administer renders emergency care or services at or near the scene of an accident or, disaster to the victims of the accident or disaster shall, or other emergency, or en route to a treatment facility, is not be held liable to the recipient of the emergency

care or services for any damages resulting from the rendering of that care or services.

~~The provisions of this~~ This section ~~shall~~ does not be ~~construed to relieve the a~~ person ~~rendering emergency care~~ from liability for ~~injury or death to the victim proximately~~ damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services. Further, liability is not relieved if the emergency care was rendered for remuneration or with the expectation of remuneration.

Approved March 26, 1987

Filed March 30, 1987

CHAPTER 311

HOUSE BILL NO. 1237
(Committee on Natural Resources)
(At the request of the Department of Health)

SOLID WASTE MANAGEMENT

AN ACT to amend and reenact subsection 1 of section 23-29-02, and sections 23-29-03, 23-29-04, 23-29-07, 23-29-08, and 23-29-13 of the North Dakota Century Code, relating to solid waste management and land protection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.

SECTION 2. AMENDMENT. Section 23-29-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-03. Definitions.

1. "Collection" ~~shall mean~~ means the act of removing solid wastes from the central storage point of the primary source or residential container.
2. "Department" ~~shall mean~~ means the North Dakota state department of health charged with the administration and enforcement of this chapter.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Person" ~~shall mean~~ means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision

of this state or any other state or political subdivision thereof, and any legal successor, representative agent or agency of the foregoing.

5. "Resource recovery" means the recovery of material or energy from solid wastes.
6. "Sanitary landfilling" shall mean means an engineered method of disposing of solid wastes on land in a manner that protects the environment by spreading the waste in thin layers, compacting it to the smallest practical volume, and covering it with soil by the end of each working day.
- 5- "Solid wastes" shall mean garbage, refuse, and other discarded solid materials, including solid waste materials resulting from industrial and commercial operations, as well as from communities.
7. "Solid wastes" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500, 86 Stat. 816, 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919, 42 U.S.C. 2011 et seq.].
- 6- 8. "Solid waste management" shall mean means the purposeful systematic control of the storage, collection, transport, handling, and disposal of solid wastes.
- 7- "Storage" shall mean the interim containment of solid waste, in an approved manner after generation and prior to ultimate disposal.
9. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
- 8- 10. "Transport" shall mean means the movement of solid waste subsequent to collection and prior to disposal.

SECTION 3. AMENDMENT. Section 23-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-04. Powers and duties of the department. The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state solid waste management program pursuant to provisions of this chapter.
2. Provide technical assistance on request to political subdivisions of the state and cooperate with appropriate federal agencies in carrying out the duties under this chapter, and may, on request, provide technical assistance to other persons.
3. Encourage and recommend procedures for the utilization of self-financing solid waste management systems and intermunicipal agencies in accomplishing the desired objective of this chapter.
4. Promote the planning and application of resource recovery facilities and systems which preserve and enhance the quality of air, water, and all resources.
5. Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 3251 et seq.], as amended, and for other state or federal legislation to assist in the management of solid wastes.
6. Survey the solid waste management needs within the state and maintain and upgrade the North Dakota solid waste management plan.
7. Require any person or combinations thereof within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of this chapter.
8. Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing solid waste storage, collection, transport, handling, resource recovery, and disposal, in order to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable it to carry out the purposes and provisions of this chapter and the adopted solid waste management plan.
9. Establish the procedures for permits governing the design and, construction, operation, and closure of solid waste management facilities and systems.
10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection, notice, and hearing, prohibiting violation of any of the provisions of this

chapter or of any rules and regulations issued pursuant thereto, and requiring the taking of such remedial measures for solid waste management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this chapter.

SECTION 4. AMENDMENT. Section 23-29-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-07. Permits. The department is hereby authorized to issue permits for solid waste management facilities, and ~~to~~ solid waste transporters. It shall be unlawful for any person to own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. All such permits shall be nontransferable and shall be for a term of ~~two years of not more than five years~~ from the date of issuance. All such permits so issued shall be conditioned upon the observance of the laws of the state and the rules and regulations authorized herein.

~~All existing solid waste management activities shall comply with the permit requirements of this chapter within twelve months of July 1, 1975.~~

SECTION 5. AMENDMENT. Section 23-29-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-08. Inspections. The department is hereby authorized to inspect all solid waste management activities and facilities, at all reasonable times, to ensure compliance with the laws of this state, the provisions of this chapter, and the rules and regulations authorized herein.

SECTION 6. AMENDMENT. Section 23-29-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-29-13. Plats. All persons operating a solid waste ~~facility~~ management facilities for disposal under a permit issued pursuant to this chapter shall, upon completion of the operation at each site, file a plat of the area with the register of deeds of each county in which the facility is located, together with a description of the wastes placed therein.

Approved March 12, 1987
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