

HEALTH AND SAFETY

CHAPTER 298

HOUSE BILL NO. 1083

(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

HEALTH COUNCIL CONSTRUCTION RULES

AN ACT to amend and reenact subsection 4 of section 23-01-03 of the North Dakota Century Code, relating to the powers and duties of the state health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records, ~~provided no regulation shall be made as. No rule may be adopted with respect to building construction of existing medical hospitals save in relation or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.~~

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 299

HOUSE BILL NO. 1537
(Representatives Goetz, Marks)
(Senators D. Meyer, Lodoen)

HEALTH DEPARTMENT RULES

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to rulemaking authority of the state department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Rulemaking authority and procedure.

1. Except as provided in subsection 2, no rule which the state department of health and consolidated laboratories, hereinafter the department, adopts for the purpose of the state administering a program under the federal Clean Air Act, federal Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and Recovery Act, federal Comprehensive Environmental Response, Compensation and Liability Act, federal Emergency Planning and Community Right to Know Act of 1986, federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, may be more stringent than corresponding federal regulations which address the same circumstances. In adopting such rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1 of this section, only if it makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this Act within nine months of the filing of the petition.

4. All existing rules of the department remain in full force and effect after the effective date of this Act, pending department review and revision under subsection 3.
5. Any person who is issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent that the department's rule violates this Act by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this Act.
6. The provisions of this Act may not be construed so as to require the department to review and propose revisions to any existing rule regarding the collection of fees by the department in connection with the administration of any program identified in subsection 1.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 300

HOUSE BILL NO. 1359
(Representatives D. Larson, Stenehjem, Clayburgh)
(Senators Naaden, Ingstad)

RABIES CONTROL

AN ACT to amend and reenact section 23-01-18 of the North Dakota Century Code, relating to control of rabies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-18. State department of health and consolidated laboratories responsible for control of rabies. The state department of health and consolidated laboratories shall be responsible for the prevention and control of rabies. The department shall place its primary emphasis on human exposure cases but shall also be authorized to provide rabies vaccine for dogs and cats and may employ a veterinarian to administer such vaccine. The department shall also provide rabies vaccine for humans if requested to do so by the attending physician of the person to receive such vaccine. The department may provide rabies vaccine for individuals whose net financial resources and income are insufficient to enable them to obtain the vaccine. In addition, the department shall have the authority to quarantine, vaccinate, or exterminate any animal suspected of rabies. If requested to do so by local authorities, the department shall assist them in the prevention and control of rabies where an emergency exists.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 301

SENATE BILL NO. 2200
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

LOCAL BOARDS OF HEALTH

AN ACT to create and enact a new section to chapter 23-03, a new section to chapter 23-04, and a new section to chapter 23-14 of the North Dakota Century Code, relating to the county health officer, city health officer, and withdrawal from health districts; to amend and reenact sections 23-03-01, 23-03-02, 23-03-03, 23-03-05, 23-03-07, 23-03-08, 23-03-10, 23-04-01, 23-04-02, 23-04-03, 23-04-04, 23-04-05, 23-04-06, 23-04-08, 23-05-01, 23-05-02, 23-05-03, 23-05-04, 23-05-07, 23-05-12, 23-14-01, 23-14-01.1, 23-14-03, 23-14-04, 23-14-05, 23-14-07, 23-14-08, 23-14-09, 23-14-10, 23-14-13, and 23-14-14 of the North Dakota Century Code, relating to local boards of health; and to repeal sections 23-03-04, 23-03-06, 23-03-09, 23-03-11, 23-04-07, 23-04-09, 23-05-08, and 23-05-09 of the North Dakota Century Code, relating to local boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-01. County board of health - How composed - Term of office - Qualifications. The board of county commissioners shall appoint a five member county board of health shall consist of the state's attorney, the county superintendent of schools, and the superintendent of public health. The superintendent of public health shall be learned in medicine, shall hold a license to practice medicine and surgery within this state, and shall be appointed by the board of county commissioners at its first meeting each year for a term of one year and until his successor is appointed and qualified. The five members of the county board of health must include one physician, one dentist, one business or professional person, one farmer, and one county commissioner. The initial members of the county board of health must be appointed for terms as follows: one for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments must be for five years. In no instance may the board be either all male or all female. Each appointee shall serve until a successor is appointed or qualified, and if a vacancy occurs, the vacancy shall be filled by appointment for the remainder of the unexpired term. Each appointee shall qualify by filing the constitutional oath of office in the office of the county auditor. In the event a county does not have a resident physician or dentist, these positions may be filled by a physician and dentist from an immediately adjacent county, or if not practical, by other licensed providers of health services who are residents in the county. Members of the board may be compensated at the rate not to exceed forty-five dollars per day and for not to exceed twenty-five days in any one year. They must be reimbursed for

expenses incurred in the manner and to the extent provided for state officers.

SECTION 2. AMENDMENT. Section 23-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-02. Officers of county board of health. The state's attorney shall act as president of the county board of health; the county superintendent shall act as vice president thereof; and the county superintendent of health shall be secretary of the board. The president shall preside at the meetings of the board and in his absence the vice president shall perform the duties of president. At the first meeting after their appointment and annually thereafter, the members of the board shall organize by electing a president, a vice president, and such other officers as they deem necessary. Upon appointment and qualification, the health officer is the secretary of the board.

SECTION 3. A new section to chapter 23-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

County health officer. The county board of health shall appoint for a term of five years a county health officer subject to removal for cause by the county board of health. The health officer must be a physician currently licensed to practice medicine in North Dakota and need not be a resident of the county when appointed. The health officer shall qualify by filing the constitutional oath of office in the manner provided for the members of the county board of health.

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

23-03-03. Meetings of county board of health. The county board of health shall meet at the county seat at such time within thirty days after the appointment of the county superintendent of health as he may designate. He shall give notice of the time and place of such meeting to the other members of the board at least five days prior to the meeting. Thereafter, the board shall meet at the county seat at least once in every three months.

SECTION 5. AMENDMENT. Section 23-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-05. Compensation of county superintendent of public health officer. The county superintendent of public health officer shall receive such compensation as the board of county commissioners' health may determine.

SECTION 6. AMENDMENT. Section 23-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-07. Powers and duties of county superintendent of public health officer. The county superintendent of public health officer shall:

1. Exercise the powers of the county board of health under the supervision of such board, and of the state department of health and consolidated laboratories throughout the county outside of the corporate limits of cities.
2. Supervise the township boards of health within his county.

- ~~3-~~ Furnish, at the expense of the county board of health, to the clerk of each township and to each physician within his jurisdiction, proper blanks for reporting to him all contagious and infectious diseases, and he shall instruct such persons in the proper method of making the reports.
- ~~4-~~ Execute by agents appointed by him the duties of any township board of health in his county which neglects or refuses to perform its duties or to execute the rules, orders, or regulations of the county board of health.
- ~~5-~~ 2. Make sanitary inspections of such places as he deems advisable when he believes there is a probability that a dangerous disease health threatening condition exists within his jurisdiction, and take such action as he may deem necessary for the protection of the public health.
- ~~6-~~ Send out circulars, if he deems the same necessary, permitting the use of the long distance telephone at the expense of the county board of health in cases of emergency.
- ~~7-~~ 3. Investigate, subject to the supervisory control of the state department of health and consolidated laboratories, public water and ice supplies which are suspected of being infected contaminated, and cause them to be condemned when he finds it necessary.
- ~~8-~~ Investigate public milk supplies, whenever he deems such investigation to be necessary, and prohibit the sale of unwholesome milk and dairy products.
- ~~9-~~ Stop shipment of spoiled or unwholesome meat, the slaughtering of diseased animals, and the subsequent sale of the meat thereof.
- ~~10-~~ 4. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the county board of health for investigation as provided in section 15-47-23.
- ~~11-~~ 5. Enforce all laws, rules, and regulations relating to the preservation of the life and health of the people of the county.
- ~~12-~~ 6. Keep a record of all the proceedings of the county board of health and of his official acts.
- ~~13-~~ Keep a record of all reportable diseases occurring in his jurisdiction showing the statistical data required by the state department of health.

* SECTION 7. AMENDMENT. Section 23-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-08. County superintendent of health officer may quarantine - Expenses. The county superintendent of public health officer shall decide when quarantine and disinfection are necessary for the safety of the public. He may establish quarantines and perform such acts as are required for disinfection when the same is necessary, and may enforce his orders and the

* NOTE: Section 23-03-08 was also amended by section 1 of Senate Bill No. 2053, chapter 302.

orders of the county board of health in connection therewith. All expenses incurred in quarantining or disinfecting outside of incorporated cities shall be audited by the county board of health and paid out of the general fund of the county.

SECTION 8. AMENDMENT. Section 23-03-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-10. Removal of county ~~superintendent of public health officer~~. Whenever the state department of health and consolidated laboratories has reason to believe that the county ~~superintendent of public health officer~~ is failing to perform his duties, it may report the case to the county board of ~~county commissioners~~ health, which, after proper hearing at its next meeting, may declare the office vacant and may appoint another physician to such office for the remainder of the unexpired term.

SECTION 9. AMENDMENT. Section 23-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-01. Board of health in council cities. The board of health in a city operating under the council form of government shall be under the supervision of the state department of health and consolidated laboratories and shall consist of the following members:

1. Four aldermen appointed by the mayor at the first meeting of the city council in April of each year.
2. The city engineer.
3. The city health officer.

SECTION 10. AMENDMENT. Section 23-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-02. City health officer —~~Appointment; term of office; removal~~ in council cities. The mayor, at the regular meeting of the city council in April of each odd-numbered year, shall appoint as city health officer a person licensed to practice medicine and surgery within this state. Such appointment shall be subject to confirmation by the city council. The health officer shall hold his office for two years and until his successor is appointed and qualified. When the state department of health and consolidated laboratories is satisfied that the city health officer is neglecting or refusing to perform the duties of his office, it may report the case to the city council, and at the next meeting thereof, the mayor shall declare the office vacant and shall appoint another physician to fill the unexpired term.

SECTION 11. A new section to chapter 23-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

City health officer in commission cities. The board of health in a city operating under a city commission form of government shall appoint, as health officer, a person licensed to practice medicine within this state. The health officer shall hold office for two years and until a successor is appointed and qualified. When the state department of health and consolidated laboratories is satisfied that the city health officer is neglecting or refusing to perform the duties of his office, it may report the

case to the city board of health, and at the next meeting thereof, the board shall declare the office vacant and shall appoint another physician to fill the unexpired term.

SECTION 12. AMENDMENT. Section 23-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-03. Officers of city board boards of health. The board of health of a city operating under the council form of government and the board of health of a city operating under the commission form of government shall elect from its members a president and a vice president, and other officers they deem necessary. The city health officer shall act as secretary and executive officer of the board.

SECTION 13. AMENDMENT. Section 23-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-04. Time of meetings - Quorum - Duties of officers. The board city boards of health in a council city shall meet on the first Tuesday after the regular meeting of the city council in April and on the second Tuesday in July, October, and January in each year. Special meetings may be held at any time on the call of the president and secretary. The hour and place of all meetings shall be determined by the city health officer. A majority of the board shall constitute a quorum. The president shall preside at the meetings of the board, and in his absence, the vice president shall perform the duties of the president.

SECTION 14. AMENDMENT. Section 23-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-05. Powers and duties of city health officer. The health officer of a city operating under the council or commission form of government shall:

1. Keep a record of the proceedings of the city board of health-
- 2- ~~Keep a record and~~ of his official acts.
- 3- 2. Enforce within his jurisdiction the health ordinances of the city, the rules and regulations of the state department of health and consolidated laboratories and of the city board of health, and the health laws of the state.
- 4- ~~Instruct the physicians within his jurisdiction in the proper methods to employ in reporting contagious diseases, and furnish the necessary blanks for that purpose. The blanks shall be in the form prescribed by the state department of health.~~
- 5- ~~Keep a record of all the dangerous, contagious, and infectious diseases occurring within his jurisdiction, showing the name and address of the party affected, the name of the disease, by whom the same was reported, and such other statistical data as may be required by the state department of health.~~
3. Exercise the powers and duties of the city board of health under the supervision of such board and of the state department of health and consolidated laboratories.

4. Make sanitary inspections of such places as he deems advisable when he believes there is a probability that a health threatening condition exists within his jurisdiction, and take such action as he may deem necessary for the protection of the public health.
5. Investigate, subject to the supervisory control of the state department of health and consolidated laboratories, public water and ice supplies which are suspected of being contaminated, and cause them to be condemned when he finds it necessary.
6. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the city board of health for investigation.

SECTION 15. AMENDMENT. Section 23-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-06. Board of city commissioners is board of health in commission city cities. In a city operating under the commission system of government, the board of city commissioners shall constitute may appoint a board of health or the commission may serve as the board of health. The If the commission serves as the board of health, the city physician shall be is the executive officer of such the board. A board of health appointed by the city commission in a city operating under the city commission form of government is under the supervision of the state department of health and consolidated laboratories and consists of five members, including one physician, one dentist, one business or professional person, one city commissioner, and one other person appointed by the mayor, subject to confirmation by the city commission. When a city and county are organized as a health district under provisions of section 23-14-01.1, the "one other person" must be a county commissioner appointed by the board of county commissioners. Initially, the appointments will be one for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments must be for five years. In no instance may the board be either all male or all female. Each appointee shall serve until a successor is appointed and qualified, and if a vacancy occurs, the vacancy must be filled by appointment for the remainder of the unexpired term in the same manner as the initial appointment. Each appointee shall qualify by filing the constitutional oath of office in the office of the city or county auditor as the case may be. Members of the board appointed by the commission may be compensated at a rate not to exceed forty-five dollars per day and for not to exceed twenty-five days in any one year. They must be reimbursed for expenses incurred in the manner and to the extent provided for state officers.

SECTION 16. AMENDMENT. Section 23-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-08. Duty of police, civil officers, and other citizens to aid city physician health officer. All members of the police force of a city, operating under the commission system of government, all magistrates and other civil officers thereof, and all citizens, shall aid the city physician health officer in the discharge of his duties, and on his demand, the chief of police shall serve, or detail one or more policemen to serve, the notices issued by the city physician health officer and to perform such other duties as he may require.

* SECTION 17. AMENDMENT. Section 23-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-01. Powers and duties of local board of health. The district, county, and city, ~~and township~~ boards of health ~~shall be known as~~ subject to the supervisory control of the state department of health and consolidated laboratories and the state health officer, are local boards of health, and each board shall have the following powers and duties within its jurisdiction:

1. To employ ~~such~~ persons as may be necessary to carry into effect the regulations established by it and the provisions of this title.
2. To inquire into all nuisances, sources of filth, and causes of sickness, and make ~~such~~ regulations regarding the same as are necessary for the public health and safety, ~~but the regulations of the township board of health shall be temporary, and such board, immediately upon taking such action, shall report the same to the county superintendent of public health, who shall give the board specific instructions or take such action as he deems necessary for the protection of public health.~~
3. To adopt such quarantine and sanitary measures as are necessary when an infectious or contagious disease exists in its jurisdiction.
- ~~4. To provide such necessities of life as in its judgment shall be needed for the maintenance, welfare, and comfort of persons afflicted with contagious and infectious diseases.~~
- 5- 4. To enter into and examine at any time all buildings, lots, and places of any description within its jurisdiction for the purpose of ascertaining the conditions thereof insofar as public health may be affected.
- 6- 5. To make ~~such~~ rules and regulations ~~as are necessary and proper in~~ district health units and county health departments and to recommend to city councils or city commissions, as the case may be, ordinances for the preservation protection of public health and safety.
6. To keep records and make reports as may be required by the state department of health and consolidated laboratories.
7. To prepare a budget for the next fiscal year at the time at which, and in the manner in which in the case of a county, a county budget is adopted. The budget must be submitted to the county commissioners for approval. In the case of a city, the budget must be submitted to the governing body of the city for approval.

SECTION 18. AMENDMENT. Section 23-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-02. County board of health - Additional powers. The county board of health, subject to the supervisory control of the state department of health and consolidated laboratories and the state health officer, shall

* NOTE: Section 23-05-01 was also amended by section 2 of Senate Bill No. 2053, chapter 302.

have the following additional powers ~~within the county and outside of the corporate limits of any city:~~

1. To supervise all matters relating to the preservation of the life and health of the people of the county, including the supervision of public water supplies and sewerage systems.
2. To isolate, kill, or remove any animal affected with a contagious or infectious disease when such animal is a menace to the health of human beings.
3. To make and enforce orders in local matters when an emergency exists, or when the local board of health has neglected or refused to act with promptness or efficiency, or when the local board has not been established.

SECTION 19. AMENDMENT. Section 23-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-03. Publication of regulations and rules established by local board of health. Notice of general orders ~~and~~ regulations, and rules made by a local board of health shall be published once in the official newspaper published within the jurisdiction of the board, and if no such newspaper is published within such jurisdiction, then such notice either shall be published in the county official newspaper or shall be posted in five public places within the jurisdiction of the board. Such publication or posting shall constitute legal notice to all persons.

SECTION 20. AMENDMENT. Section 23-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-04. Abatement and removal of nuisance, source of filth, and cause of sickness - Costs charged against property. When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, ~~not to exceed twenty-four hours~~ thirty days. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the owners of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done.

SECTION 21. AMENDMENT. Section 23-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-07. Expenses of local boards of health - How audited and paid. Expenses incurred by a local board of health in carrying into effect the provisions of this title ~~and in providing for the care and maintenance of persons afflicted with contagious and infectious disease~~ shall be audited and allowed by the board incurring the same and certified for payment in the manner following:

1. ~~In the case of a township board of health, such expenses shall be certified to the township clerk and by him paid out of the general fund of the township.~~
2. ~~In the case of a county or city board of health or of a health commissioner, such expenses shall be certified to the governing body of the county or city for payment out of the general fund of the county or city, as the case may be, in the same manner as other expenses against the same are paid.~~
2. In the case of a district board of health, expenses must be paid out of the board of health budget.

SECTION 22. AMENDMENT. Section 23-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-12. Violation of orders of boards of health - Obstructing inspection - Penalty. Every person who violates, or refuses to comply with, any lawful order, direction, prohibition, ordinance, rule, or regulation prescribed by any board of health or health officer, or any regulation or rule lawfully made or established by any public officer under authority of the health laws, is guilty of a class B misdemeanor.

SECTION 23. AMENDMENT. Section 23-14-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-01. Formation of health districts. When in the opinion of the state health officer, on information obtained in cooperation with local health officers and local boards of health, the health needs of any given area may be better served by the formation of a health district, as hereinafter provided, the state health officer shall so notify the county auditor of each county involved and the city auditor of each city having a population in excess of fifteen thousand persons. Each county auditor and city auditor must place the matter before the governing board of the county or city at its next regular meeting, and the governing board by resolution either must adopt or reject the plan at the same or the first subsequent meeting. If resolutions are adopted by the governing boards of the cities and counties as hereinbefore provided, adopting the health district plan, all laws and parts of laws in conflict therewith automatically shall become inoperative throughout the territory embraced within the district, and particularly the laws relative to city, township, and county boards of health. If the board of county commissioners of any county or the city council or city commission of any city, rejects the plan, it may submit the question of adoption of the provisions of this chapter to the qualified electors of the county or city at the next ensuing general or special election to be held in said county or city. In all elections held under this chapter the votes cast in the cities having a population in excess of fifteen thousand inhabitants shall be considered separate and apart from the votes cast elsewhere in the county, and the participation in the health district by any city shall be governed by the votes cast in the city as distinguished from the vote cast elsewhere in the county. If a majority of the qualified electors vote in favor of the adoption of the provisions of this chapter, the board of county commissioners, within ten days after the canvass of said election, shall adopt such resolution, and, upon the adoption of such resolution such county or counties, together with the cities voting in favor of the plan, shall be considered a district health unit or health district. On a petition filed with the county auditor containing names of qualified

electors of the county equal to ten percent of the votes cast for the office of governor at the last general election, an election on the question of forming a health district shall be held as heretofore provided. The health districts shall follow county lines, and in case the district as outlined by the state health officer includes more than one county, and the plan is adopted in any of said counties or cities, and rejected in any one or more of the other counties or cities, it shall become effective in the county or counties and city or cities adopting the plan, if in the exercise of his discretion the state health officer deems the same operative.

SECTION 24. AMENDMENT. Section 23-14-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-01.1. Formation of county-city health districts. Notwithstanding any provisions of this chapter, a county not included within any health district as provided in this section may by a resolution adopted by the board of county commissioners of such county contract with the governing body of a city within such county which has a health department approved by the state department of health and consolidated laboratories to provide health services throughout the county and in other cities within the county which do not have approved health departments. Such contract shall be entered into pursuant to section 54-40-08. Further, the governing body of a city having a health department approved by the state department of health and consolidated laboratories may enter into a contract with the board of county commissioners of the county in which the city is located to provide health services to the county and cities therein which do not have an approved health department, which contract shall be entered into pursuant to the provisions of section 54-40-08. Any contract entered into under the authority of this section may be renegotiated after existing one year by mutual agreement between the governing bodies which are parties to the contract, or by one of the contracting parties giving notice by certified mail to the other contracting party. Such notice shall specify a time and place for the contracting parties to meet and renegotiate the existing contract. The time specified in the notice shall be no sooner than fifteen days after the mailing of the certified notice. When the contract is executed the health department of the city shall exercise and perform all the necessary powers and duties pursuant to all health laws of this state, and any provisions of this chapter relating to organizing district boards of health shall not apply. The county so organized pursuant to a contract entered into under this provision shall be considered a health district for all purposes by the state department of health and consolidated laboratories.

SECTION 25. AMENDMENT. Section 23-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-03. Organized by what officers. Upon the adoption of the plan by a single county, or by two or more contiguous counties, as provided in section 23-14-01, the board of county commissioners of the county or counties concerned shall proceed to organize such district health unit by the appointment of a district board of health as hereinafter provided, and in all cases where two or more counties constitute one health district, the term board of county commissioners shall be taken to mean the boards of county commissioners of the several counties concerned acting together in joint session unless the context requires a different meaning. The original meeting for the appointment of the district board of health, as well as all other meetings held for the purpose of filling vacancies on said board, shall be held at the county seat of the county having the larger population; ~~upon~~

notice given to the boards of county commissioners by the state health officer.

* SECTION 26. AMENDMENT. Section 23-14-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-04. District board of health. A district health unit shall be organized by the appointment of a district board of health by the joint board of county commissioners to consist of not less than five members, one of whom shall be a physician, one a dentist, one a business or professional person, one a farmer, and one ~~additional person~~ a county commissioner, who shall be appointed for terms as follows: One for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments shall be for a term of five years. In no instance shall the board be either all male or all female. Each appointee shall serve until his successor is appointed and qualified, and if a vacancy occurs, the vacancy shall be filled by appointing for the remainder of the unexpired term in the same manner as the original appointments at the annual joint budget meeting. Each appointee shall qualify by filing the constitutional oath of office, and in case of a district health unit, such oath shall be filed in the office of the county auditor of the county having the larger population according to the most recent state or federal census. Each county in the district shall have at least one representative on the district board of health and counties of over fifteen thousand population shall have an additional representative for each fifteen thousand population or major fraction thereof. In district units of less than five counties, each county shall have at least one representative on the district board of health and the additional representatives selected to constitute the minimum five-member board shall be equitably apportioned among the counties on a population basis. In a city-county health district comprised of only one county and having a city or cities of fifteen thousand population or more, each city having a population of fifteen thousand or more shall have a representative on the district board of health for each fifteen thousand population or major fraction thereof and the remaining population of the county, exclusive of the populations of cities with fifteen thousand population or more each, shall have a representative on the district board of health for each fifteen thousand population or major fraction thereof. Members of the board may be compensated at the rate not to exceed forty-five dollars per day and not to exceed twenty-five days in any one year. They shall be reimbursed for expenses incurred in the manner and to the extent provided for state officers.

SECTION 27. AMENDMENT. Section 23-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-05. District health officer. The district board of health shall appoint for a term of five years a full-time district health officer, or a part-time district health officer, subject to removal for cause by the district board of health. He shall be a physician and surgeon regularly currently licensed to practice medicine and surgery in the state of North Dakota, and shall have the qualifications prescribed by the conference of state and territorial health officers of the United States; or shall have the recommendation of the state health officer; and he need not be, when appointed, a resident of the county or district. He shall qualify by filing the constitutional oath of office in the manner provided for the members of the district board of health. The district health officer shall, consistent with the terms of his appointment, devote his full time or his part time to

* NOTE: Section 23-14-04 was also amended by section 3 of Senate Bill No. 2410, chapter 635.

the duties of his office, and shall maintain an office within the jurisdiction of the district health unit, at the place to be designated by the district board of health, such office, with necessary equipment, to be furnished by the district board of health.

SECTION 28. AMENDMENT. Section 23-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-07. Duties of health officer. The district health officer shall perform all the duties and shall be guided by the limitations prescribed by law relative to county, and city, and township health officers, and he shall make such reports to the state department of health and consolidated laboratories as may be required by it.

SECTION 29. AMENDMENT. Section 23-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-08. Assistants to health officer. The district board of health shall provide for such ~~technical and clerical assistants to the district health officer~~ personnel as it may deem necessary. The district health officer shall have the right to select and discharge such assistants assistant health officers in the counties and cities in the district. When the health district is served by a part-time health officer, the district board of health may appoint an executive officer.

SECTION 30. AMENDMENT. Section 23-14-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-09. Meetings of board of health. The district board of health shall meet at least quarterly at the courthouse in the county seat of the county, and if two or more counties constitute the local health district the first meeting shall be held at the courthouse in the county seat of the larger county as determined by the most recent state and federal census. Subsequent quarterly meetings and special meetings shall be held at a place to be determined by the board, with the thought of rotating the meeting place among the various counties of the district. At the first meeting after their appointment, and annually thereafter, the members of the board shall organize by electing a president, a treasurer, and such other officers as they deem necessary. The treasurer shall be bonded in an amount to be fixed by the board. Upon his appointment and qualification, the district health officer shall be, ex officio, the secretary of the board and shall keep such records and make such reports as may be required by the board and by the state department of health and consolidated laboratories. If the health officer is not the physician appointed to the board, he does not have a vote in matters of the board. The office of secretary and treasurer may be combined if the health officer is the physician appointed to the board.

SECTION 31. AMENDMENT. Section 23-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-10. Salary and compensation. The salary of the district health officer and assistant health officers shall be fixed by the district board of health. The district board of health shall determine the compensation of such ~~technical and clerical help~~ personnel as may be allowed by the district board of health ~~to the district health officer~~, and the district board of health also shall determine the amount of mileage and other expense to be paid for the necessary travel of the district health officer ~~and~~, his

assistants, not to exceed the per diem and mileage rates established for and other personnel, in the manner and to the extent allowed state officers.

SECTION 32. AMENDMENT. Section 23-14-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-13. Dissolution. After a district health unit organized as provided in this chapter has been in operation for two years, the same may be dissolved in the following manner: On a petition filed with the county auditor of each county of a health district containing names of qualified electors of the county equal to ten percent of the votes cast for governor at the last general election in each county, an election on the question of dissolution shall be presented to the qualified electors in each county in the district at the next general or special election held in the each county in the district. If a majority of the votes cast in a majority of the counties favor dissolution, the health unit shall be dissolved on July January first following the election. If a majority of the votes cast in a majority of the counties are against dissolution, no other election shall be held until a period of two years has again expired.

SECTION 33. A new section to chapter 23-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Withdrawal. After a district health unit organized as provided in this chapter has been in operation for two years, any county may withdraw from the district in the following manner: On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent of the votes cast for governor at the last general election in that county, an election on the question of withdrawal must be presented to the qualified electors in the county at the next general or special election held in the county. If a majority of the votes cast favor withdrawing from the district, the county will be considered withdrawn from the unit on January first following the election. If a majority of the votes cast are against withdrawal, no other election may be held until a period of two years has again expired.

SECTION 34. AMENDMENT. Section 23-14-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-14. Acquiring and disposing of property. The district board of health may acquire by lease, purchase, construction or gift for district health office use and control both real and personal property for all purposes authorized by law or necessary to the exercise of the powers granted herein. The district board of health may finance the purchase, construction or equipping of a building on either owned or leased property for the use and purposes for which the health district is formed, and to carry out the functions of the health unit as provided by law, in either of the following ways:

1. The district board of health may issue and sell bonds in an aggregate amount not to exceed two times the then authorized tax revenues of the district for the year in which the bonds are to be issued and sold; or
2. The district board of health may mortgage or otherwise encumber the building to be constructed in an amount of not to exceed two times

the then authorized tax revenue of the district for the year in which such construction is to be commenced.

Bonds so issued, and the income therefrom, shall be exempt from any taxes except inheritance, estate and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as hereinabove provided, shall never become an obligation or indebtedness of the state of North Dakota, or of the counties or the cities comprising the district board of health. Any such indebtedness may be foreclosed in any manner provided by law. The district board of health may also convey, sell, dispose of or otherwise transfer personal and real property acquired as provided herein. If upon dissolution of a district health unit there remains any balance in the treasury of the district after all obligations have been paid, the balance shall be paid into the general fund of the counties comprising the health district in proportion to the mill levy most recently assessed for budget purposes assessed valuation most recently used in preparing the health district budget under the provisions of this chapter. If any county in the district votes to withdraw from the district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services will remain the property of the district for use elsewhere in the district.

SECTION 35. REPEAL. Sections 23-03-04, 23-03-06, 23-03-09, 23-03-11, 23-04-07, 23-04-09, 23-05-08, and 23-05-09 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 302

SENATE BILL NO. 2053
(Legislative Council)
(Interim Judiciary Committee)

QUARANTINE

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to quarantine procedure for persons with communicable diseases; and to amend and reenact sections 23-03-08, 23-05-01, 23-07-06, 23-07-13, and 40-06-01 of the North Dakota Century Code, relating to quarantine authority of local boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-08. County ~~superintendent of~~ health officer may quarantine - Expenses. The county ~~superintendent of public~~ health officer shall decide when quarantine and disinfection are necessary for the safety of the public. ~~He~~ The county health officer may establish quarantines consistent with procedures provided under section 5 of this Act and perform such acts as are required for disinfection when the same is necessary, and may enforce ~~his~~ the county health officer's orders and the orders of the county board of health in connection therewith. All expenses incurred in quarantining or disinfecting outside of incorporated cities ~~shall~~ must be audited by the county board of health and paid out of the general fund of the county.

** SECTION 2. AMENDMENT. Section 23-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-01. Powers and duties of local board of health. The county, city, and township boards of health ~~shall be known as~~ are local boards of health, and each board shall have the following powers and duties within its jurisdiction:

1. To employ such persons as may be necessary to carry into effect the regulations established by it and the provisions of this title.
2. To inquire into all nuisances, sources of filth, and causes of sickness, and make such regulations regarding the same as are necessary for the public health and safety, but the regulations of the township board of health ~~shall be~~ are temporary, and such board, immediately upon taking such action, shall report the same to the county ~~superintendent of public~~ health officer, who shall give the board specific instructions or take such action as ~~he~~ the county health officer deems necessary for the protection of public health.

* NOTE: Section 23-03-08 was also amended by section 7 of Senate Bill No. 2200, chapter 301.

** NOTE: Section 23-05-01 was also amended by section 17 of Senate Bill No. 2200, chapter 301.

3. To adopt such quarantine and sanitary measures as are necessary when an infectious or contagious disease exists in its jurisdiction, but quarantine measures must be in compliance with section 5 of this Act.
4. To provide such necessities of life as in its judgment ~~shall be~~ are needed for the maintenance, welfare, and comfort of persons afflicted with contagious and infectious diseases.
5. To enter into and examine at any time all buildings, lots, and places of any description within its jurisdiction for the purpose of ascertaining the conditions thereof insofar as public health may be affected.
6. To make such rules ~~and regulations~~ as are necessary and proper for the preservation of public health and safety.

SECTION 3. AMENDMENT. Section 23-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-06. Contagious or infectious diseases - Power of local board of health to quarantine. Whenever ~~it shall come to the knowledge of~~ a local board of health ~~knows~~ that a case of a contagious or infectious disease exists within its jurisdiction, the board immediately shall examine the facts of the case and ~~may~~ adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease. The board immediately may cause any person infected with such disease to be removed to a separate house if, in the opinion of the health officer ~~or county superintendent of public health~~, such person can be removed without danger to ~~his~~ that person's health. If the infected person cannot be removed without danger to ~~his~~ that person's health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and may cause the persons in the neighborhood to be removed, and may take such other measures as it deems necessary for the safety of the inhabitants within its jurisdiction. Quarantine measures adopted under this section must be in compliance with section 5 of this Act.

SECTION 4. AMENDMENT. Section 23-07-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-13. Contagious or infectious diseases - Local board may establish temporary hospital. Each local board of health may provide such temporary hospital or place of reception for persons afflicted with any contagious or infectious disease as it judges best for their accommodation and the safety of the inhabitants. It may provide a means of transportation to such hospital for persons suffering from any such disease. All such hospitals, and all private houses or other places in which exists any contagious or infectious disease, during the existence of such disease, ~~shall be~~ are under the control and subject to the regulations of the local board of health. ~~All the inmates of any such house or other place, during the existence of such disease therein, must conform to the regulations and obey the instructions of the local board with reference thereto.~~

SECTION 5. A new chapter to title 23 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
2. "Local board" means a board of health as described under section 23-05-01 or a district board of health as described under section 23-14-04.
3. "Respondent" means the person ordered to be confined or restricted under this chapter.

Confinement order. The state health officer or any local board may order any person into confinement if there are reasonable grounds to believe that the person is infected with any communicable disease and is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, the state health officer or local board determines that the person poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.

Contents of the order. The confinement order must be in writing and set forth the name of the person to be confined; the grounds for the belief that the person has a communicable disease and is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection; that the person poses a substantial threat to the public health and that confinement is necessary and is the least restrictive alternative to protect or preserve the public health; the place of designated confinement, and any conditions or restrictions necessary to protect or preserve the public health. The order must also list the respondent's rights under this chapter. A copy of the order must be given to the respondent. If the order is issued by a local board, the local board, within twenty-four hours of the issuance of the order, shall notify the state health officer that the order has been issued. The order is effective for not more than thirty days. Orders of confinement under this chapter may be issued for successive periods of not more than thirty days each if issued before the last business day of the preceding period of confinement.

Place of confinement. A respondent must be confined in a place designated in the order until the entity that issued the order determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent.

Court hearing. A respondent has the right to a court hearing in the county court of the county in which the respondent resides. The respondent or the respondent's representative has a right to be present at the hearing. The respondent has a right to counsel and if the respondent is indigent or otherwise unable to pay for or obtain counsel, the respondent has the right to have counsel appointed. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of receipt of the request, excluding Saturdays and

holidays. A request for a hearing does not stay the order of confinement. The court shall determine if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health. If the order is issued by a local board, the state health officer has the right to be made a party to the proceedings.

Notice of hearing. Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's rights under this chapter.

Access to records. Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital must make available at the hearing for use by the respondent, respondent's representative, or respondent's counsel all records in its possession relating to the conditions of the respondent.

Burden of proof. At a hearing conducted under this chapter, the entity that ordered confinement has the burden of showing by clear and convincing evidence that the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection, and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

Court findings and orders. If the court finds by clear and convincing evidence that the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection, and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate until the entity that issued the original confinement order determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

Request to terminate or modify an order - Review of confinement orders. A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court periodically shall conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

Closed hearing - Confidentiality of information. At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential.

Right of appeal. Any party aggrieved by an order of the county court under this section may appeal to the supreme court.

SECTION 6. AMENDMENT. Section 40-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-06-01. Jurisdiction of governing body. Except as otherwise provided by law, a governing body of a municipality ~~shall have~~ has jurisdiction:

1. Over any commons or public grounds belonging to such municipality and with the consent of the majority of the owners thereof shall have power to regulate the banks, shores, and wharves of that portion of any navigable stream within the corporate limits; and
2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health and quarantine ordinances and regulations, subject to section 5 of this Act, and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 303

SENATE BILL NO. 2055
(Legislative Council)
(Interim Judiciary Committee)

UNIFORM ANATOMICAL GIFT ACT

AN ACT to create and enact chapter 23-06.2 of the North Dakota Century Code, relating to the adoption of the Uniform Anatomical Gift Act (1987); to amend and reenact sections 23-06-01.2, 39-06-07, and subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to disposal of bodies and donor designations on operators' licenses; to repeal section 23-06-01.1 and chapter 23-06.1 of the North Dakota Century Code, relating to physician liability for the removal of a body part and the Uniform Anatomical Gift Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-01.2. Application of other laws. ~~The provisions of sections~~ Sections 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-16, 23-06-17, and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the authorization for disposal of a body or parts thereof provided in ~~chapter 23-06-1~~ and for the purposes of chapter ~~23-06-1~~ 23-06.2.

SECTION 2. Chapter 23-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-06.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card, a statement attached to or imprinted upon a motor vehicle operator's license, a will, or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.

6. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.
10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
 - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.
 - b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license, subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.
 - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated,

or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.

4. The donor may amend or revoke an anatomical gift, not made by will, only by:
 - a. A signed statement;
 - b. An oral statement made in the presence of two individuals;
 - c. Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or
 - d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.
9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

23-06.2-03. Making, revoking, and objecting to anatomical gifts by others.

1. Unless an individual at the time of death has refused to make any anatomical gift, then any member of the following classes of persons, in the order of priority stated, may make an anatomical gift of all or any part of the decedent's body for any purpose specified in section 23-06.2-06:
 - a. The spouse of the decedent.
 - b. An adult son or daughter of the decedent.
 - c. Either parent of the decedent.

- d. An adult brother or sister of the decedent.
 - e. A grandparent of the decedent.
 - f. A guardian of the person of the decedent at the time of death.
2. A gift may not be made by a person specified in subsection 1 if:
- a. A person in a prior class is available at the time of death to make an anatomical gift;
 - b. The person has knowledge of contrary indications by the decedent; or
 - c. The person has knowledge of an objection by a member of the person's class or a prior class.
3. An anatomical gift by a person under subsection 1 must be made by a document of gift signed by the person, or by the person's telegraphic, recorded telephonic, or other recorded message, or other type of communication from the person that is contemporaneously reduced to writing and signed by the recipient.
4. An anatomical gift by a person under subsection 1 may be revoked by any member of the same or a prior class if, before commencement of procedures for the removal of any part from the body of the decedent, the physician, surgeon, technician, or enucleator taking the part knows of the revocation.
5. A failure to make an anatomical gift under subsection 1 is not an objection to the making of an anatomical gift.
- 23-06.2-04. Authorization by coroner or local public health official.
1. The coroner may permit the removal and release of any part from a body within the coroner's custody, for transplant or therapeutic purposes, if the following requirements are met:
- a. A request has been received from a person specified in subsection 1 of section 23-06.2-06;
 - b. A reasonable effort has been made, taking into account the useful life of the part, to locate and examine the decedent's medical records, and to inform persons specified in subsection 1 of section 23-06.2-03 of the option to make or object to the making of an anatomical gift;
 - c. That official does not know of a contrary indication by the decedent or objection by a person having priority to act as specified in subsection 1 of section 23-06.2-03;
 - d. The removal will be by a physician, surgeon, or technician; but in the case of eyes, removal may be by an enucleator;
 - e. The removal will not interfere with any autopsy or investigation; and

f. The removal will be in accordance with accepted medical standards and cosmetic restoration will be done if appropriate.

2. If the body is not within the custody of the coroner, the local public health officer may permit the removal and release of any part from a body within the local public health officer's custody for transplant or therapeutic purposes if the enumerated requirements of subsection 1 are met.
3. An official permitting the removal and release of any part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it is released.

23-06.2-05. Request for consent to an anatomical gift - Protocol - Exceptions.

1. 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 1 of section 23-06.2-03, 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 that includes the training of employees or other persons designated to make the request, the procedure to be followed in making the request, 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.
2. If, based upon medical criteria, a request would not yield an anatomical gift that would be suitable for use, there is authorized an exception to the request required by this section.
3. 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. The determination is an exception to the request required by this section.
4. A reasonable search for a document of gift or other information identifying the bearer as an anatomical gift donor or as an individual who has refused to make an anatomical gift must be made by:
 - a. A law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes to be dead or near death; and
 - b. A hospital representative upon the admission of an individual at or near the time of death, if there is no other source of that information immediately available.

5. If a document of gift or evidence of refusal to make a gift is located by the search required by subdivision a of subsection 3, a hospital must be notified of the contents and the document must be sent to the hospital with the individual to whom it applies.
6. If, at or near the time of death, a hospital knows that an anatomical gift has been made pursuant to subsection 1 of section 23-06.2-03 or has been authorized pursuant to section 23-06.2-04, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is specified; if not, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift.
7. Any person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

23-06.2-06. Persons who may become donees - Purposes for which anatomical gifts may be made.

1. The following persons may become donees of anatomical gifts for the purposes stated:
 - a. Any hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.
 - b. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy.
 - c. Any specified individual for transplantation or therapy needed by that individual.
2. An anatomical gift may be made to a specified donee or without specifying a donee. If a donee is not specified or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.
3. If the donee has knowledge of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class under subsection 1 of section 23-06.2-03, the donee may not accept the gift.

23-06.2-07. Delivery of document of gift.

1. Delivery of a document of gift during the donor's lifetime is not necessary to the validity of an anatomical gift.
2. If an anatomical gift is made to a specified donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures immediately after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested person, upon or after the donor's death, the person in

possession shall provide the document of gift or a copy for examination.

23-06.2-08. Rights and duties at death.

1. Rights of a donee created by an anatomical gift are paramount to rights of others except as provided by subsection 2 of section 23-06.2-11. A donee may accept or reject an anatomical gift. If a donee accepts a gift of the entire body, the donee, subject to the terms of the gift, may authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.
2. The time of death shall be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the attending physician or surgeon nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part, except as provided in subdivision c of subsection 2 of section 23-06.2-02.
3. If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

23-06.2-09. Coordination of procurement and utilization. Each hospital, after consultation with other hospitals and procurement organizations in the region, shall establish agreements or affiliations for coordination of procurement and utilization of anatomical gifts.

23-06.2-10. Sale or purchase prohibited - Penalty.

1. A person may not knowingly, for valuable consideration, purchase or sell any part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.
2. Valuable consideration does not include reasonable payments for removal, processing, disposal, preservation, quality control, storage, transportation, and implantation of a part.
3. Any person who violates this section is guilty of a class B misdemeanor.

23-06.2-11. Examination - Autopsy - Liability.

1. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.
2. This chapter is subject to the laws of this state prescribing powers and duties with respect to autopsies.

3. Except as provided in section 23-06.2-10, a hospital, physician, surgeon, coroner, local public health officer, enucleator, technician, or any other person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so is not liable for that activity in any civil action or criminal proceeding.
4. An individual who makes an anatomical gift and the individual's estate are not liable for any injury or damage that may result from the use of the anatomical gift.

23-06.2-12. Application. This chapter applies to a document of gift or refusal to make a gift signed by the donor before, on, or after the effective date of this Act.

SECTION 3. AMENDMENT. Section 39-06-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-07. Application for license or instruction permit.

1. Every application for an instruction permit or for an operator's license must be made upon a form furnished by the commissioner.
2. Every ~~said~~ application must state the full name, date of birth, sex, residence and mailing address, and briefly describe the applicant. In signing the application the applicant ~~must be~~ is deemed to have certified that all information contained on the application is true and correct ~~and~~. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.1~~ 23-06.2. The application must contain such other information as the commissioner may require.
3. Whenever an application is received from a person previously licensed in another jurisdiction, the commissioner may request a copy of the driver's record from such other jurisdiction. When received, the driving record becomes a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.
4. Whenever the commissioner receives a request for a driving record from another licensing jurisdiction the record must be forwarded without charge.

* SECTION 4. AMENDMENT. Subsection 1 of section 39-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner shall, upon payment of a ten dollar fee, issue to every qualified applicant an operator's license as applied for in the form prescribed by the commissioner. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color

* NOTE: Section 39-06-14 was also amended by section 1 of House Bill No. 1666, chapter 461, and section 5 of House Bill No. 1172, chapter 460.

background that is different from the color used for other licensees. If requested on the license application, the license issued by the commissioner must ~~identify the licensee as a donor~~ include a statement making an anatomical gift under ~~the provisions of chapter 23-06.1~~ 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The state highway department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under this Act. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The commissioner may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on ~~operator's~~ operators' licenses.

SECTION 5. REPEAL. Section 23-06-01.1 and chapter 23-06.1 of the North Dakota Century Code are hereby repealed.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 304

HOUSE BILL NO. 1369
(J. DeMers, A. Olson)

FUNERAL COSTS AND MEDICAL ASSISTANCE

AN ACT to amend and reenact subsection 4 of section 23-06-03 and section 50-24.1-02.3 of the North Dakota Century Code, relating to the duty of burial and pre-need funeral service plans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-06-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial. The cost of the burial shall be paid by the county social service board, subject to the following:
 - a. The sum of ~~six~~ eight hundred dollars shall be allowed for personal property and burial services furnished by a funeral director or funeral home.
 - b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.
 - c. The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.
 - d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.
 - e. Any grave opening and closing expenses, not to exceed the sum of one hundred seventy-five dollars.

Payment for services rendered or personal property furnished under subdivisions a, b, and c shall be made to the funeral home or funeral director furnishing the same, while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e shall be made to the cemetery furnishing the same.

SECTION 2. AMENDMENT. Section 50-24.1-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.3. When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made under a pre-need funeral service contract by an applicant for or recipient of medical assistance. A pre-need funeral service contract deposit is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that prepayments or deposits on pre-need funeral service contracts total less than one thousand four hundred dollars.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 305

HOUSE BILL NO. 1273
(Gates, Hoffner)

PRE-NEED FUNERAL CONTRACT DEPOSITORIES

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to designated depositories for pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-06-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited in a bank or trust company - Bank Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within thirty days in a bank, credit union, savings and loan association, or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the person making such payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor at the request of the person making such payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or

* NOTE: Section 23-06-03.1 was also amended by section 1 of House Bill No. 1163, chapter 306.

warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 306

HOUSE BILL NO. 1163
(Committee on Human Services and Veterans Affairs)
(At the request of the Securities Commissioner)

PRE-NEED FUNERAL SERVICE DEPOSITS

AN ACT to amend and reenact sections 23-06-03.1, 43-10.1-03, 43-10.1-04, and 43-10.1-05 of the North Dakota Century Code, relating to pre-need funeral services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-06-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited ~~in a bank or trust company - Bank~~ Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within ~~thirty ten~~ ten days in a bank, credit union, savings and loan association, or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the person making such payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor at the request of the person making such payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be

* NOTE: Section 23-06-03.1 was also amended by section 1 of House Bill No. 1273, chapter 305.

identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

* SECTION 2. AMENDMENT. Section 43-10.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-03. Annual report filed with securities commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts shall file a report covering the period of the preceding calendar year with the securities commissioner, which report shall include:

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.
4. The name and address of the bank, credit union, savings and loan association, or trust company in which such consideration was deposited in accordance with section 23-06-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank, credit union, savings and loan association, or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the securities commissioner for the purpose of the proper administration of this chapter.

Such report shall be accompanied by a filing fee of ~~five~~ fifteen dollars and shall be a public record.

SECTION 3. AMENDMENT. Section 43-10.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 43-10.1-03 was also amended by section 2 of Senate Bill No. 2209, chapter 125.

43-10.1-04. Bond. The owner or operator of a licensed funeral establishment or cemetery association shall, at the time of filing the annual report required in section 43-10.1-03, file with the ~~commissioner of securities~~ commissioner of securities commissioner a corporate or personal surety bond approved by the ~~commissioner of securities~~ commissioner of securities commissioner. The bond shall be payable to the state of North Dakota, and in such form and style as the ~~commissioner of securities~~ commissioner of securities commissioner may require for the use and benefit of the purchasers or persons making payments upon pre-need funeral service contracts or their estates, or the beneficiary of the pre-need funeral service contract or his estate for damages suffered by them because of the failure to comply with all provisions of the pre-need funeral service contract.

SECTION 4. AMENDMENT. Section 43-10.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-05. Verification by ~~commissioner of securities~~ commissioner of securities commissioner. Within ninety days after the filing of a report as required by section 43-10.1-03, the ~~commissioner of securities~~ commissioner of securities commissioner shall verify such report by mailing to five percent of the ~~purchasers or persons making payments upon such pre-need funeral service contracts~~ purchasers or persons making payments upon such pre-need funeral service contracts and to the banks, credit unions, savings and loan associations, or trust companies where the report indicates the consideration ~~filed~~ deposited, a questionnaire which ~~the purchaser or person making payment and the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds.~~ the purchaser or person making payment and the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds. The ~~commissioner of securities~~ commissioner of securities commissioner shall verify the facts on additional contracts reported if the commissioner shall have reason to believe additional verification to be necessary, ~~but shall always verify at least one contract listed in every report.~~

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 307

HOUSE BILL NO. 1584
(Representatives Martin, Kouba, V. Thompson)
(Senators Maixner, Krauter, Nalewaja)

BURIAL PLACE AND CULTURAL RESOURCE PROTECTION

AN ACT to amend and reenact sections 23-06-27, 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-07 of the North Dakota Century Code, relating to the unlawful opening of places of burial and the protection of cultural resources; to repeal section 55-03-05 of the North Dakota Century Code, relating to the unrestricted exploration for and excavation of cultural resources by a landowner; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-27 of the 1987 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 Protection of human burial sites, human remains, and burial goods - Unlawful acts - Penalties - Exceptions. A person is guilty of a class E 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 As used in this section:
 - a. "Burial goods" shall mean any objects or items interred with human remains at the time of burial.
 - b. "Disturb" shall mean move, open, expose, dig up, disinter, excavate, remove, carry away, damage, injure, deface, desecrate, loot, vandalize, mutilate, or destroy.
 - c. "Human burial site" shall mean any place of interment, by any means, of human remains or burial goods, which is designated by a grave marker or other burial structure or which is not so designated, but is, in fact, discovered or believed to exist on the basis of archaeological or historical evidence.
 - d. "Human remains" shall mean any part of the body of a deceased human being in any stage of decomposition.
 - e. "Land" shall mean all lands, including submerged lands, located within the state of North Dakota which are owned by the state or its political subdivisions, agencies, or instrumentalities, or by any private person.

- f. "Person" shall mean a natural person, corporation, unincorporated association, partnership, proprietorship, or governmental entity.
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. A person is guilty of a class C felony who, without authority of law, breaks open any building wherein any body of a deceased human being is deposited while awaiting burial, with the intent of either removing such human body, or any part thereof, or stealing the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles intended to be buried with the human body.
 3. A person is guilty of a felony who, without authority of law, willfully, as defined in section 12.1-02-02, disturbs a human burial site, human remains, or burial goods found in or on any land, or attempts to do the same, or incites or procures the same to be done.
 - a. A person is guilty of a class B felony if the offense in this subsection was committed for monetary gain, whether or not such monetary gain was related to the use of the land in or on which the burial, remains, or goods were disturbed.
 - b. A person is guilty of a class C felony if the offense in this subsection was not committed for monetary gain.
 4. Any person who knows or has reasonable grounds to believe that a human burial site, human remains, or burial goods, found in or on any land, are being disturbed or may be disturbed, by human activity without authority of law or by natural forces, shall immediately notify the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to provide such notification and willfully, as defined in section 12.1-02-02, fails to provide the same.
 5. Any person who knows or has reasonable grounds to believe that that person has encountered or discovered a human burial site, human remains, or burial goods associated with a human burial, in or on any land, shall refrain from any activity which might disturb or immediately cease any continued activity which might cause further disturbance of such burial, remains, or goods and shall, as soon as practicable, report the presence or discovery of the burial, remains, or goods to the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to make such report and willfully, as defined in section 12.1-02-02, fails to make the same. The requirements imposed in this subsection shall not apply to any person engaged in the salvaging excavation or other disinterment of a human burial under authority of law.
 6. Any person having been found guilty or having pleaded guilty, as a result of having been charged with an offense under subsection 2 or subsection 3, shall be ordered to forfeit to the state any and all

human remains and burial goods acquired in connection with the commission of the offense and may be ordered to forfeit to the state any and all equipment used in connection with the commission of the offense. In addition, any such person having been charged with an offense under subsection 3 shall be ordered to pay all reasonable costs actually incurred in the reinterment of the human remains and burial goods so forfeited. In conjunction with the prosecution of any offense under this subsection, the remains in question in the prosecution may, as deemed necessary, be subjected to nonintrusive, nondestructive professional study for the exclusive purpose of determining whether the remains are human.

7. This section Subsection 3 does not apply to the inadvertent opening disturbance of a human burial mounds site, ~~unregistered historic graves, prehistoric graves, or prehistoric cemeteries~~ when such remains would not appear to a reasonable person to be human, or human remains, or burial goods when the state department of health and consolidated laboratories and the state historical board have been notified of such ~~discovery~~ disturbance and such ~~unregistered~~ human remains and burial goods shall be studied and reinterred pursuant to rules adopted by the state department of health and consolidated laboratories and the state historical board. This section Subsection 3 also does not apply to situations in which the state department of health and consolidated laboratories and the state historical board are notified of the need to disinter and move ~~prehistoric~~ the contents of human ~~remains~~ burial sites which are recorded with the state historical board in order to prevent the destruction of such ~~graves~~ human burial sites 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~~ the human burial sites. In these situations such ~~recorded~~ ~~disinterred~~ human remains and burial goods must be studied and reinterred pursuant to rules adopted by the state department of health and consolidated laboratories and the state historical board.

SECTION 2. AMENDMENT. Section 55-03-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-01.1. Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state of North Dakota and to excavate cultural resources on private land. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state of North Dakota or in the excavation of cultural resources on private land for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the superintendent. Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer. Any such permit shall be granted only for the investigation, excavation, or other recording of cultural resources at the locations described in the application for permit. Each such application shall be accompanied by a fee of one hundred dollars.

*** SECTION 3. AMENDMENT.** Section 55-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-02. Contents of permit. Any permit issued pursuant to an application made as provided for in ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ shall clearly describe the purpose of the permit and shall be in such form as prescribed by the superintendent. No permit shall be granted until the superintendent shall be satisfied that the applicant is professionally qualified to conduct that work for which a permit is required as provided for in ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~. When the cultural resources are on land owned by an instrumentality of the state of North Dakota, such permit will not be granted until the applicant has agreed to deliver to the superintendent all of the ~~articles,~~ fossil remains, and archaeological, paleontological, or historical materials ~~of a useful nature~~ found and removed from such land. When the cultural resources are on private land, such permit will not be granted until the applicant has agreed to deliver to the superintendent all of the human remains and burial goods, as such terms are defined in section 23-06-27, found and removed from such land. In all cases, a permit shall not be granted until the applicant has agreed to deliver to the superintendent copies of all records and reports as determined by the superintendent to be pertinent to the work performed.

SECTION 4. AMENDMENT. Section 55-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-03. Period for which permit granted - Revocation. Each permit issued pursuant to an application made as required by section 55-03-01 shall terminate on December thirty-first of the year in which it is issued. Any permit issued pursuant to the provisions of ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ may be revoked by the superintendent at any time, if it appears to such officer that any identification, evaluation, or mitigation of adverse effects on cultural resources, historic buildings, structures, or objects performed by the permittee are being conducted negligently or improperly, or without regard for the careful preservation and conservation of the artifacts and materials they contain.

SECTION 5. AMENDMENT. Section 55-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-04. Fees deposited in revolving fund - Use. All fees collected by the superintendent under the provisions of ~~sections 55-03-00.1, 55-03-01, and 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ shall be deposited in the revolving fund of the state historical board and shall be used by the superintendent for making investigations of permit applicants and for the management and analysis of records and artifacts submitted to the superintendent under the provisions of ~~sections 55-03-00.1, 55-03-01, 55-03-01.1, and 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~.

**** SECTION 6. AMENDMENT.** Section 55-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-07. Violation of chapter - Penalty. Any person violating any provision of this chapter is guilty of a class ~~B~~ **A** misdemeanor and shall forfeit to the state all archaeological, paleontological, or historical

*** NOTE:** Section 55-03-02 was also amended by section 11 of Senate Bill No. 2218, chapter 645.

**** NOTE:** Section 55-03-07 was also amended by section 12 of Senate Bill No. 2218, chapter 645.

articles and materials discovered by ~~him~~ that person. Any such violation shall be held to be committed in the county where the exploration or excavation for archaeological, paleontological, or historical material was undertaken.

SECTION 7. REPEAL. Section 55-03-05 of the North Dakota Century Code is hereby repealed.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1989

Filed April 6, 1989

CHAPTER 308

SENATE BILL NO. 2483
(Senators Nalewaja, Maxson)
(Representatives J. DeMers, Wentz)

DETERMINATION OF DEATH

AN ACT to adopt the Uniform Determination of Death Act, relating to the legal requirements for determination of death, and to provide notice in case of imminent death.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

SECTION 2. Notice to family in case of imminent death. If it appears to a physician who has primary responsibility for the treatment and care of an individual that the death of the individual is imminent, the physician shall make reasonable efforts to notify the individual's next of kin. If after making reasonable efforts the next of kin are not notified, the physician shall document in the medical records of the individual the efforts made to notify the next of kin. If notice is given, the physician shall provide the next of kin with appropriate information regarding the individual's medical condition and available medical therapies.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 309

HOUSE BILL NO. 1481
(Representatives J. DeMers, Kolbo, Clayburgh)
(Senators Mushik, Redlin)

TERMINAL CONDITION TREATMENT OPTION

AN ACT to define the rights and responsibilities of the terminally ill to control decisions regarding administration of life-prolonging treatment; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative intent. Every competent adult has the right and the responsibility to control the decisions relating to the adult's own medical care, including the decision to have medical or surgical means or procedures calculated to prolong the adult's life provided, withheld; or withdrawn. Communication about such matters is encouraged between each person and the person's family, the physician, and other health care providers. Sections 2 through 14 of this Act do not condone, authorize, approve, or permit mercy killing, euthanasia, or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

SECTION 2. Definitions. In sections 2 through 14 of this Act, unless the context otherwise requires:

1. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.
2. "Declaration" means a writing executed in accordance with the requirements of subsection 1 of section 3.
3. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.
4. "Life-prolonging treatment" means any medical procedure, treatment, or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying and where, in the judgment of the attending physician, death will occur whether or not the treatment is utilized. The term does not include the provision of appropriate nutrition and hydration or the performance of any medical procedure necessary to provide comfort, care, or alleviate pain.
5. "Physician" means an individual licensed to practice medicine in this state pursuant to chapter 43-17.

6. "Qualified patient" means a patient eighteen or more years of age who has executed a declaration and who has been determined by the attending physician and another physician who has personally examined the patient to be in a terminal condition.
7. "Terminal condition" means an incurable or irreversible condition that, without the administration of life-prolonging treatment, will result, in the opinion of the attending physician, in imminent death. The term does not include any form of senility, Alzheimer's disease, mental retardation, mental illness, or chronic mental or physical impairment, including comatose conditions that will not result in imminent death.

SECTION 3. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:
 - a. Related to the declarant by blood or marriage;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;
 - d. Directly financially responsible for the declarant's medical care;
 - e. Attending physicians of the declarant.
2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a regional long-term care ombudsman as provided in section 50-10.1-02.
3. A declaration must be substantially in the form set forth in subdivision a or b, as applicable, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.
 - a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:

Declaration made this ____ day of _____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.
3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
4. I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.
5. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____

Witness _____

- b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:

Declaration made this _____ day of _____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.

2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.
3. I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.
4. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____
Witness _____

4. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 4. When declaration operative. A declaration becomes operative when it is communicated to the attending physician, and the declarant is determined by the attending physician and another physician to be in a terminal condition and no longer able to make decisions regarding administration of life-prolonging treatment. A declaration made under section 3 of this Act does not obligate the physician to use, withhold, or withdraw life-prolonging treatment but is presumptive evidence of the declarant's desires concerning the use, withholding, or withdrawal of such treatment and must be given great weight by the physician in determining the intent of the incompetent declarant.

SECTION 5. Revocation of declaration.

1. A declaration may be revoked at any time and in any manner by the declarant, provided the declarant is competent, including by:
 - a. A signed, dated writing;
 - b. Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction; or
 - c. An oral expression of intent to revoke.

2. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.
3. The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

SECTION 6. Recording determination of terminal condition and declaration. Upon determining that the declarant is in a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

SECTION 7. Management of qualified patients.

1. A qualified patient may make decisions regarding life-prolonging treatment as long as the patient is competent.
2. Sections 2 through 14 of this Act do not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.
3. Sections 2 through 14 of this Act do not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration. Nutrition and hydration may be withheld from a patient with a terminal condition if the nutrition and hydration could not be physically assimilated by the patient or would be physically harmful or unreasonably painful to the patient.
4. Notwithstanding a declaration executed under this Act, medical treatment must be provided to a pregnant patient with a terminal condition unless, to a reasonable degree of medical certainty as certified on the patient's medical chart by the attending physician and an obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or will prolong severe pain that cannot be alleviated by medication.

SECTION 8. Transfer of patients. An attending physician or other health care provider who is unwilling to comply with sections 2 through 14 of this Act shall take, as promptly as practicable, all reasonable steps to transfer care of the declarant to another physician or health care provider who is willing to comply with sections 2 through 14 of this Act.

SECTION 9. Immunities.

1. In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the declaration pursuant to the requirements of sections 2 through 14 of this Act.
2. A physician or other health care provider, whose actions are authorized by sections 2 through 14 of this Act, is not subject to criminal or civil liability or discipline for unprofessional

conduct with respect to those actions unless done in a grossly negligent manner.

SECTION 10. Penalties.

1. An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a class A misdemeanor.
2. An individual who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in section 5, is guilty of a class C felony.
3. A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a class A misdemeanor.
4. A person who coerces or fraudulently induces another to execute a declaration under this Act is guilty of a class C felony.
5. The sanctions provided in this section do not displace any sanction applicable under other law.

SECTION 11. Miscellaneous provisions.

1. Death resulting from the withholding or withdrawal of life-prolonging treatment pursuant to a declaration and in accordance with sections 2 through 14 of this Act does not constitute, for any purpose, a suicide or homicide.
2. The making of a declaration under section 3 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging treatment from an insured qualified patient, notwithstanding any term to the contrary.
3. A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.
4. This Act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-prolonging treatment in the event of a terminal condition.
5. Sections 2 through 14 of this Act do not affect the right of a patient to make decisions regarding use of life-prolonging treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of medical care.

6. Sections 2 through 14 of this Act do not require any physician or other health care provider to take any action contrary to reasonable medical standards.

SECTION 12. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with sections 2 through 14 of this Act and is valid.

SECTION 13. Recognition of declaration executed in another state. A declaration executed in another state by a resident of that state in compliance with the law of that state or of this state is validly executed for purposes of sections 2 through 14 of this Act.

SECTION 14. Effect of previous declaration. An instrument executed before the effective date of this Act, which basically complies with the intent of subsection 1 of section 3 of this Act, must be given effect pursuant to this Act. A previously executed instrument that purports to comply with the intent of this Act is valid for five years from the effective date of this Act unless the declarant becomes incompetent within five years after the execution of the declaration and remains incompetent at the time of the determination of a terminal condition under section 4 of this Act, in which case the declaration continues in effect. When the declaration expires, a new declaration must be executed if the declarant wishes to make a written declaration under this Act.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 310

SENATE BILL NO. 2049
(Legislative Council)
(Interim Judiciary Committee)

AIDS REPORTING

AN ACT to create and enact sections 23-07-02.1 and 23-07-02.2 of the North Dakota Century Code, relating to the reporting of cases of human immunodeficiency virus infection; to amend and reenact sections 23-07-02 and 23-07-21 of the North Dakota Century Code, relating to reportable diseases and penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-02. Who to report reportable diseases. ~~The~~ Except as otherwise provided by section 23-07-02.1, the following persons shall report to the nearest health officer having jurisdiction any reportable disease coming to ~~his~~ their knowledge:

1. All physicians.
2. All persons who treat or administer to the sick by whatever method.
3. Householders.
4. Keepers of hotels, boardinghouses, or lodginghouses.
5. Nurses.
6. Schoolteachers.
7. All other persons treating, nursing, lodging, caring for, or having knowledge of the existence of any reportable disease.

If the person reporting is the attending physician, ~~he~~ the physician shall report not less than twice a week, in the form and manner directed by the state department of health and consolidated laboratories, the condition of the person afflicted and the state of the disease.

SECTION 2. Section 23-07-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall

make a report on that individual to the state department of health and consolidated laboratories. All persons, other than an attending physician, treating an individual known to have human immunodeficiency virus infection in a hospital, clinic, sanitarium, penal institution, or other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 3. Section 23-07-02.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07-02.2. Confidentiality of reports. A report required by section 23-07-02.1 and held by the state department of health and consolidated laboratories is strictly confidential information. The information may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. Release may be made of medical or epidemiologic information for statistical purposes in a manner such that no individual person can be identified;
2. Release may be made of medical or epidemiologic information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or
3. Release may be made of medical or epidemiologic information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health and consolidated laboratories may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

* SECTION 4. AMENDMENT. Section 23-07-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-21. Penalties. Any Except as otherwise provided in this section, any person:

1. Who violates or fails to obey any of the provisions of this chapter, any lawful rule or regulation made by the state department

* NOTE: Section 23-07-21 was also amended by section 11 of Senate Bill No. 2048, chapter 181.

of health and consolidated laboratories, or any order issued by any state, district, county, or municipal health officer;

2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that he is infected with a venereal disease, willfully exposes another person to infection,

is guilty of an infraction. Any person required to make a report under section 23-07-02.1 who releases or makes public confidential information or otherwise breaches the confidentiality requirements of section 23-07-02.2 is guilty of a class C felony.

Approved March 31, 1989

Filed March 31, 1989

CHAPTER 311

SENATE BILL NO. 2054
(Legislative Council)
(Interim Judiciary Committee)

SCHOOL DISTRICT CONTAGIOUS DISEASE POLICY

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to adoption by school districts of a policy governing the disposition of students, employees, and independent contractors with significant contagious diseases; and to amend and reenact section 23-07-16 of the North Dakota Century Code, relating to school attendance by a child with a significant contagious or infectious disease.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-16. Child having contagious or infectious disease prohibited from attending school - Exception. No Except as provided by section 2 of this Act, no principal, superintendent, or teacher of any school, and no parent or guardian of any minor child, shall permit any child having any significant contagious or infectious disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public or private school until permitted to do so under the regulations of the local board of health.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

School district to adopt policy relating to significant contagious diseases. Each school district shall adopt a policy governing the disposition of children attending school within the school district, employees of the school district, or independent contractors under contract with the school district who are diagnosed as having a significant contagious disease. The state department of health and consolidated laboratories shall, with advice from the superintendent of public instruction, adopt rules establishing guidelines for the policy. The guidelines may include methods and procedures relating to a determination of whether and under what conditions a child with a significant contagious disease may not continue attending school or whether and under what conditions an employee or an independent contractor with a significant contagious disease may not continue in a work assignment.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 312

HOUSE BILL NO. 1134
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

DISEASE CONTROL RECORDS DISCLOSURE

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to disclosure of disease control records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disclosure of records. To protect the integrity of disease control records, to ensure their proper use, and to ensure efficient and proper administration of the department's disease control function, it is unlawful for any person to permit inspection of or to disclose information contained in disease control records, including results of laboratory tests, or to copy or issue a copy of all or part of any such record except as authorized by rules.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 313

HOUSE BILL NO. 1079
(R. Larson)

CONTAGIOUS DISEASE DISCLOSURES

AN ACT to create and enact a new section to chapter 23-07.3 of the North Dakota Century Code, relating to disclosure of confidential information concerning exposure to contagious diseases; to amend and reenact sections 23-07.3-01 and 23-07.3-02 of the North Dakota Century Code, relating to notification of exposure to contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.3-01. Definitions. In ~~sections 23-07.3-01 and 23-07.3-02~~ this chapter, unless the context or subject matter otherwise requires:

1. "Contagious 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.
2. "Department" means the state department of health and consolidated laboratories.
3. "Emergency medical technician" services provider" means a firefighter, law enforcement officer, or other 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-~~ 4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

- c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.3-02. 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. Procedures following significant exposure.

1. If an emergency medical services provider has a significant exposure in the process of caring for a patient, the emergency medical services provider shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician shall request the patient to consent to testing to determine the presence of any contagious disease. The patient must be informed that the patient may refuse to consent to the test and, if the patient refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider. If the patient consents to testing, the attending physician shall test for the presence of contagious disease.
3. If a patient who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian. If a patient who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease must be conducted.
4. The attending physician that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider who reported the significant exposure. The physician shall use a case number instead of the patient's name in making a report to the emergency medical services provider who requested the test to ensure the confidentiality of the patient's identity.

SECTION 3. A new section to chapter 23-07.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Penalty. A person authorized to receive information that is confidential under this chapter, other than the individual identified in the information, who releases or makes public that confidential information is guilty of a class C felony.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 314

SENATE BILL NO. 2050
(Legislative Council)
(Interim Judiciary Committee)

AIDS TESTING

AN ACT to provide for informed consent to testing for antibodies to the human immunodeficiency virus and confidentiality of test results; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
2. "Health care services" means any services included in the furnishing to any individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
3. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.
4. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus.
5. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing for the presence of an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.
6. "Informed consent for testing or disclosure" means written consent on an informed consent form by an individual to the administration of a test to that individual for the presence of an antibody to the human immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.

SECTION 2. Informed consent for testing or disclosure - Exception.

1. Except when testing and disclosure is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma

center may not subject a person to a test for the presence of an antibody to the human immunodeficiency virus unless the subject of the test first provides informed consent for testing or disclosure as provided under subsection 2.

2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject with an informed consent form and shall obtain the potential test subject's signature on the form. The form must contain:
 - a. The name of the potential test subject who is giving consent and whose test results may be disclosed.
 - b. A statement of explanation to the potential test subject that the test results may be disclosed as provided under subsection 1 of section 5 of this Act and either a listing of the persons or circumstances specified under subsection 1 of section 5 of this Act or a statement that the listing is available upon request.
 - c. Spaces specifically designated for the following purposes:
 - (1) The signature of the potential test subject providing informed consent for the testing and the date on which the consent is signed; and
 - (2) The name of a person to whom the potential test subject authorizes that disclosure of test results be made, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

SECTION 3. Written consent to disclosure. An individual who is tested for the presence of an antibody to the human immunodeficiency virus may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the test results to any person at any time after providing informed consent for disclosure. A record of this consent must be maintained by the health care provider, blood bank, blood center, or plasma center authorized to disclose test results.

SECTION 4. Record maintenance. A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

SECTION 5. Confidentiality of test results.

1. Except as provided in this section, the results of a test for the presence of an antibody to the human immunodeficiency virus may be disclosed only to the following persons:
 - a. The subject of the test.
 - b. The test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.
 - c. An agent or employee of the test subject's health care provider under subdivision b who provides patient care or handles or processes specimens of body fluids or tissues.
 - d. A blood bank, blood center, or plasma center that subjects a person to a test under subsection 2 of section 2 of this Act for any of the following purposes:
 - (1) Determining the medical acceptability of blood or plasma secured from the test subject.
 - (2) Notifying the test subject of the test results.
 - (3) Investigating human immunodeficiency virus infections in blood or plasma.
 - e. A health care provider who procures, processes, distributes, or uses a human body part donated for a purpose specified under chapter 23-06.1 for the purpose of assuring medical acceptability of the gift for the purpose intended.
 - f. The state health officer or the state health officer's designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.
 - g. An embalmer licensed under chapter 43-10.
 - h. A health care facility staff committee or accreditation or health care services review organization for the purposes of conducting program monitoring and evaluation and health care services reviews.
 - i. A person who conducts research, for the purpose of research, if the researcher:
 - (1) Is affiliated with the test subject's health care provider under subdivision c;
 - (2) Has obtained permission to perform the research from an institutional review board; and
 - (3) Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final

research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

2. The results of a test may be disclosed under a lawful order of a court of record.
3. The individual who is tested may authorize disclosure to any person.

SECTION 6. Expanded disclosure of test results prohibited. A person to whom the results of a test for the presence of an antibody to the human immunodeficiency virus have been disclosed under subsection 1 of section 5 of this Act may not disclose the test results except as provided under that subsection.

SECTION 7. Civil liability. Any person who violates section 2, subsection 1 of section 5, or section 6 of this Act is liable to the subject of the test for actual damages and costs plus exemplary damages. The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 2, subsection 1 of section 5, or section 6 of this Act. A conviction for violation of this Act is not a condition precedent to bringing an action under this section.

SECTION 8. Penalty. A person who intentionally discloses the results of a blood test in violation of subsection 1 of section 5 of this Act and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 315

HOUSE BILL NO. 1088
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

BED AND BREAKFAST FACILITIES

AN ACT to create and enact four new sections to chapter 23-09.1 of the North Dakota Century Code, relating to bed and breakfast facilities; and to amend and reenact section 23-09.1-01 of the North Dakota Century Code, relating to bed and breakfast facilities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09.1-01. Definitions. As used in this chapter:

1. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
2. "Department" means the North Dakota state department of health and consolidated laboratories.
3. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.

SECTION 2. Four new sections to chapter 23-09.1 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Inspection. The department shall inspect each bed and breakfast facility at least once per year. Any duly authorized officer, employee, or agent of the department may enter and inspect any property or place on or at which a bed and breakfast facility is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted under this chapter.

License required - Application - Issuance. Before any bed and breakfast facility may operate in this state it must be licensed by the department. Licenses expire on December thirty-first following the date of issuance unless canceled by failure to comply with this chapter or with any of the rules adopted under this chapter. Renewal application for license

must be made to the department during December of every year. A license must be issued upon compliance by the applicant with provisions of this chapter and any rules adopted under this chapter. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. Licenses issued by the department are not transferable nor applicable to any premises other than those for which the license was issued.

Injunction proceedings. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule or order issued under this chapter, the department may maintain an action in the name of the state enjoining the action or practices or for an order directing compliance and, upon a showing by the department that the person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Penalty. Any person who willfully violates this chapter or any rule or order of the department must be punished by a civil penalty of not more than three hundred dollars per day of violation.

Approved March 16, 1989

Filed March 16, 1989

CHAPTER 316

SENATE BILL NO. 2262
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

HOME-PREPARED FOODS

AN ACT to declare legislative intent; to create and enact chapter 23-09.2 of the North Dakota Century Code, relating to education of food preparers; to amend and reenact subsections 14 and 15 of section 43-15-10 of the North Dakota Century Code, relating to powers of the state board of pharmacy; and to repeal sections 19-02-13, 19-02-14, 19-02-15, 19-02-16, 19-02-17, 19-02-18, 19-02-19, 19-02-20, 19-02-21, 19-02-22, 19-02-23, and 19-02-24 of the North Dakota Century Code, relating to food and drug regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT. Because facilities are not always available for the preparation of food onsite by nonprofit public-spirited organizations not regularly engaged in the business of selling food or to persons not regularly engaged in the business of preparing or selling food and who prepare food for sale directly to the ultimate consumer at a farmers' market, bake sale, or similar enterprise, it is the intent of the legislative assembly to exempt organizations and persons in those situations from preparing food in licensed or approved kitchens. Because the unintentional mishandling of food may jeopardize the public health and welfare, whether the mishandling is done by an establishment open to public patronage or by a nonprofit public-spirited organization or a person providing a limited type of food service, it is the intent of the legislative assembly to authorize the department of health and consolidated laboratories to offer educational support to food preparers.

SECTION 2. Chapter 23-09.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-09.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of health and consolidated laboratories.
2. "Food preparer" means any person who manufactures, processes, sells, handles, or stores food and who is not required to obtain a license from the department under chapter 19-02.1, 23-09, or 23-09.1.
3. Any term used in this chapter has the same meaning as when used in a comparable context in chapters 19-02.1, 23-09, and 23-09.1.

23-09.2-02. Rules. The department may adopt rules regarding education of food preparers.

23-09.2-03. Minor violations. The department, local boards of health, and district health units shall attempt to resolve minor violations of this chapter through education. The department, local boards of health, and district health units are not required to report for prosecution minor violations of this chapter.

23-09.2-04. Exclusions. This chapter does not apply to private homes where food is prepared or stored for individual family consumption and to the use of home-canned goods, nongrade A dairy products and food prepared using nongrade A dairy products, and to meat not inspected under the Federal Meat Inspection Act [34 Stat. 1260-1265; 21 U.S.C. 603 et seq.].

SECTION 3. AMENDMENT. Subsections 14 and 15 of section 43-15-10 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

14. To make, adopt, amend, and repeal rules as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, ~~chapters 19-02 and chapter 19-02.1~~ as ~~those chapters pertain~~ that chapter pertains to drugs, subject to approval of the director of the state department of health and consolidated laboratories, and chapter 19-03.1 subject to approval of the controlled substances board.
15. The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, ~~chapters 19-02 and chapter 19-02.1~~ that ~~pertain~~ pertains to drugs, chapters 19-03.1, 19-03.2, and 19-04, or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.

SECTION 4. REPEAL. Sections 19-02-13, 19-02-14, 19-02-15, 19-02-18, 19-02-19, 19-02-21, 19-02-22, and 19-02-23 of the North Dakota Century Code, and sections 19-02-16, 19-02-17, 19-02-20, and 19-02-24 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 317

HOUSE BILL NO. 1197

(Committee on Human Services and Veterans Affairs)
(At the request of the Office of Management and Budget)

BASIC CARE FACILITY LICENSING

AN ACT to create and enact a new chapter to title 23 and a new section to chapter 50-06 of the North Dakota Century Code, relating to basic care facilities under the jurisdiction of the state department of health and consolidated laboratories and the establishment of reasonable rates for basic care facilities by the department of human services; to amend and reenact sections 23-16-01, 50-02-04, subsection 8 of section 50-06-01.4, section 50-06-14.1, subsection 3 of section 50-10.1-01, subsection 3 of section 50-10.2-01, sections 50-21-01, 50-21-02, 50-21-03, 50-21-04, and subsections 17 and 24 of section 57-39.2-04 of the North Dakota Century Code, relating to transfer of the authority of the department of human services over homes for the aged and infirm to the department of health and consolidated laboratories; to repeal sections 50-18-01, 50-18-01.1, 50-18-01.2, 50-18-02, 50-18-02.1, 50-18-03, 50-18-03.1, 50-18-04, 50-18-05, 50-18-06, 50-18-06.1, 50-18-06.2, 50-18-07, and 50-18-08 of the North Dakota Century Code, relating to boarding homes for the aged and infirm under the jurisdiction of the department of human services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Basic care facility - Defined. As used in this chapter, the term "basic care facility" means any place, not licensed by the department of health and consolidated laboratories, hereinafter referred to as the department, under chapter 26-16, operated by any person, institution, organization, or private or public corporation, in which five or more individuals not related by blood or marriage to the owner or manager of the place, are received, kept, and provided with food, shelter, and care for hire or compensation. Care for hire or compensation to assist residents with functional impairments includes routine maintenance and supportive care with activities of daily living and instrumental activities of daily living which need not be provided in an institutional setting by trained and skilled medical personnel, can be administered without any possible harm to the health of the individual in care, and has no significant relationship to medical care of any type. Any place that assists its residents with walking, dressing, or toilet usage, or which promotes supervision of person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a basic care facility subject to regulation by the department.

Residential areas - Nongeriatric persons. A nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility may establish residential areas specifically for inhabitation by nongeriatric persons subject to any reasonable rules adopted by the department.

Access to pharmacist. Irrespective of the type of distribution system used, no person may refuse to allow a resident of a basic care facility to choose a pharmacist of the resident's choice for the compounding and dispensing of drugs pursuant to chapter 43-15.

Department to establish standards - Licensing - Inspection - Prosecute violations. It is the duty of the department to establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall prosecute all violations of this chapter. Upon request of the department, the state fire marshal shall inspect any place for which a license is applied or issued and shall report these findings to the department.

License required - Term - Revocation. No person, institution, organization, or public or private corporation may keep, operate, conduct, or manage a basic care facility without holding a valid license issued by the department. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

Injunction. The department may apply to the district court of the county in which the basic care facility is located for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from establishing, conducting, managing, or operating any basic care facility without obtaining a license under this chapter.

Contents of license. The license must show the name of the owner or manager of the basic care facility, its location, and the maximum number of persons that may be received and kept in the basic care facility at any one time.

Records kept by basic care facility. A record of every individual admitted to any basic care facility must be kept at the place licensed by the owner or manager in the manner and form prescribed by the department.

Authority to adopt rules. The department may adopt rules necessary to carry out its responsibilities under this chapter. Rules adopted by agencies prior to January 1, 1990, which relate to functions or agencies covered by this chapter, remain in effect until they are specifically amended or repealed by the department.

Rules on services to nongeriatric persons. The department shall adopt rules under chapter 23-16 for patient and resident care and quality care review which are not in conflict with any federal laws, and as are necessary to ensure the appropriate medical, social, and psychological services to nongeriatric persons residing in a nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility.

Department to furnish information when requested. If called upon by any person, organization, corporation, or community interested in establishing a basic care facility the department shall furnish information concerning the laws and rules governing operation of a basic care facility.

Penalty. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 23-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-01. Licensure of medical hospitals and state hospitals. After July 1, 1947, no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours shall be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Hospitals maintained and operated by the state social service board such as those for the aged and infirm and those for unmarried mothers and chiropractic hospitals and sanatoriums are not required to obtain a license under this chapter Chiropractic hospitals, sanatoriums, and hospitals such as those for unmarried mothers maintained and operated by the department of human services are not required to obtain a license under this chapter. In the case of hospitals maintained and operated by the state or in the case of homes licensed by the state social service board, the state department of health and consolidated laboratories shall have the responsibility of inspecting, rendering consultation service, and making recommendations on phases of hospital administration covered in the standards promulgated by the health council. The state hospital located at Jamestown may also obtain an annual license from the state department of health and consolidated laboratories as provided for in sections 23-16-02 and 23-16-03.

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office the state department of health and consolidated laboratories shall have the right of inspection, but no license shall be required under the provisions of this chapter when the number of such beds does not exceed four.

SECTION 3. AMENDMENT. Section 50-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-02-04. Residence in counties - How gained. If no type of public assistance or poor relief, whether county, state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each person over the age of eighteen years, who has resided one year continuously in any county in this state, shall be deemed to have residence in such county.
2. Each person who has resided one year continuously in the state, but not in any one county, shall have a residence in the county in which he or she has longest resided within such year.

3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he has last resided.

For the purposes of this section the time spent while receiving institutional care in any state licensed ~~home for the aged, infirm,~~ basic care facility or ~~home for the~~ neglected, or indigent shall not be included in the computation of time necessary to establish residence hereunder.

SECTION 4. AMENDMENT. Subsection 8 of section 50-06-01.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, the licensure of ~~boarding homes for the aged and infirm~~ basic care facilities, utilization control, and claims processing.

SECTION 5. AMENDMENT. Section 50-06-14.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-14.1. Limitation on state reimbursement for rental expenses of long-term care facilities. The department of human services shall limit the reimbursement for rental expense paid by a provider of services when a provider sells its skilled nursing facility, intermediate care facility, ~~boarding home for the aged and infirm~~ basic care facility, or other facility furnishing care to its residents, where a care rate is based, in part, upon property costs unique to that facility, to a third party who leases the facility ~~or home~~ back to the provider. The department's reimbursement for rental expense may not exceed the lesser of the rental expense paid by the provider or the cost of ownership of the facility ~~or home~~. The cost of ownership includes depreciation, interest, real estate taxes, and other expenses properly related to the facility ~~or home~~. The department of human services shall apply this limit to rates set for each facility's first fiscal year beginning on or after July 1, 1985, but shall consider, in setting such rates, all sales occurring on or after July 18, 1984.

SECTION 6. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department to establish reasonable rates. The department may establish reasonable rates payable to basic care facilities for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits under title XVI of the Social Security Act, as amended, for a reasonable subsistence compatible with decency and health.

SECTION 7. AMENDMENT. Subsection 3 of section 50-10.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Long-term care facility" means any skilled nursing facility, intermediate care facility, ~~boarding home for the aged and infirm~~ basic care facility, nursing home as defined in subsection 3 of section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as

defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.

SECTION 8. AMENDMENT. Subsection 3 of section 50-10.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Facility" means a skilled nursing care facility, intermediate care facility, boarding home for the aged and infirm basic care facility, boardinghouse, or swing bed hospital approved to furnish long-term care services.

SECTION 9. AMENDMENT. Section 50-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-01. Revolving loan fund - Appropriation. The revolving loan fund shall be maintained for the purpose of making loans to nonprofit corporations for the construction or reconstruction of nursing homes, homes for the aged and infirm basic care facilities, or combination nursing homes and homes for the aged and infirm basic care facilities. All funds transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for the purpose of providing loans in accordance with the provisions of this chapter.

SECTION 10. AMENDMENT. Section 50-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-02. Administration of revolving fund. The revolving fund and loans made therefrom shall be supervised and administered by the Bank of North Dakota. All applications for loans under the provisions of this chapter for the construction of nursing homes or combination nursing homes and homes for the aged and infirm basic care facilities shall be made to the state department of health and consolidated laboratories, which department shall be authorized, subject to the approval of the North Dakota health council, to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. All applications for the construction of homes for the aged and infirm basic care facilities shall be made to the department of human services health and consolidated laboratories, which department shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. Applications approved by the state department of health and consolidated laboratories and the North Dakota health council or the department of human services, as the case may be, shall be forwarded to the Bank of North Dakota. Upon approval of such application by the president of the Bank of North Dakota, loans shall be granted by the Bank of North Dakota from the revolving fund in accordance with the provisions of this chapter.

SECTION 11. AMENDMENT. Section 50-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-03. Amount of loan - Terms and conditions. Loans in an amount not exceeding one-half of the cost of construction or reconstruction including the cost or value of real estate upon which the facility is located and in no event exceeding one hundred fifty thousand dollars to any one applicant shall be made by the Bank of North Dakota to nonprofit corporations

to be used in the construction or reconstruction in this state of nursing homes, ~~homes for the aged and infirm~~ basic care facilities, or combination nursing homes and ~~homes for the aged and infirm~~ basic care facilities. Such loans shall bear interest at the rate of seven percent per annum and shall be repayable in the manner prescribed by the president of the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of the loans, each nonprofit corporation shall execute a contract with the state to operate such ~~home~~ basic care facility for a period of not less than twenty years, and to operate and maintain the ~~home~~ basic care facility in accordance with the standards prescribed for the licensing of such ~~home~~ basic care facility by the state department of health ~~or department of human services; as the case may be and consolidated laboratories.~~ Such contract shall also require the nonprofit corporation to maintain facilities for not less than five persons referred to such ~~home~~ basic care facility by any county social service board. Such contract shall also provide that if the use of such ~~home~~ basic care facility is discontinued or if it shall be diverted to other purposes, the full amount of the loan provided under this chapter shall immediately become due and payable. Loans shall be made only to an applicant who is not receiving other loans or grants of funds from this state for such construction or reconstruction. Payments of interest and principal upon such loans shall be made to the Bank of North Dakota and credited to the revolving fund.

SECTION 12. AMENDMENT. Section 50-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-04. Standards - Administration procedure. The state department of health and consolidated laboratories, subject to the approval of the state health council, shall establish standards of construction which shall be followed by all applicants receiving loans of funds for the construction of nursing homes or combination nursing homes and ~~homes for the aged and infirm~~ basic care facilities. The department of ~~human services~~ health and consolidated laboratories shall establish standards of construction which shall be followed by all applicants for loans for the construction of ~~homes for the aged and infirm~~ basic care facilities. The health council, in the case of the construction of ~~nursing homes or basic care facilities or combination nursing homes and homes for the aged and infirm; and the department of human services; in the case of the construction of homes for the infirm and aged basic care facilities,~~ shall approve all building plans and specifications for any facilities to be constructed in whole or in part with loans of funds provided under the provisions of this chapter prior to the disbursement of any such funds. Administrative procedures established by the state department of health and consolidated laboratories with the approval of the health council ~~and by the department of human services,~~ shall, except to construction standards, be in general in accordance with the procedures established for the administration of the federal grant-in-aid program for similar purposes under the Hill-Burton Act, or federal acts supplemental thereto.

SECTION 13. AMENDMENT. Subsections 17 and 24 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, ~~home for the aged~~ basic care facility or similar institution to any patient or occupant.

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, ~~or intermediate care facility, or basic care facility~~ licensed by the state department of health and consolidated laboratories, ~~and boarding homes for the aged and infirm licensed by the department of human services.~~

SECTION 14. REPEAL. Sections 50-18-01, 50-18-01.1, 50-18-02, 50-18-02.1, 50-18-03, 50-18-03.1, 50-18-04, 50-18-05, 50-18-06, 50-18-06.1, 50-18-06.2, 50-18-07, and 50-18-08 of the North Dakota Century Code and section 50-18-01.2 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 318

SENATE BILL NO. 2302
(Senator Ingstad)
(Representative J. DeMers)

FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT

AN ACT to provide that the provisions of the federal Health Care Quality Improvement Act of 1986 are effective in this state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Federal Health Care Quality Improvement Act of 1986 applicable in North Dakota. Pursuant to the Health Care Quality Improvement Act of 1986 [Pub. L. 99-660, Title IV; 100 Stat. 3784; 42 U.S.C. 11101 et seq.], providing for a limitation on damages for professional review actions, the provisions of that Act are effective in this state.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 319

SENATE BILL NO. 2335
(Senators Waldera, Shea, Holmberg)
(Representatives J. DeMers, Graba, Rydell)

MOBILITY IMPAIRED PARKING

AN ACT to amend and reenact subsection 2 of section 23-13-02.3, sections 39-01-15 and 39-04-10.2, subsection 7 of section 39-06.1-06, and section 39-07-07.1 of the North Dakota Century Code, relating to vehicle refueling services, parking privileges, and traffic regulations concerning mobility impaired persons; to repeal subsection 3 of section 39-01-15 of the North Dakota Century Code, relating to the committee appointed to develop guidelines for qualification and the issuance of certificates or insignia for parking privileges for the mobility impaired; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense such motor fuel safely. If, however, the filling station provides pump island service to its customers, the attendant must provide refueling services to any handicapped mobility impaired person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate ~~or insignia~~ issued pursuant to under section 39-01-15. No additional cost may be charged to a handicapped mobility impaired person because of the service. This subsection ~~shall~~ does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device.

** SECTION 2. AMENDMENT. Section 39-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-15. Parking privileges for mobility impaired - Certificate - Revocation - Continuing appropriation - Penalty.

1. Any mobility impaired person who displays prominently upon an automobile parked by that person or under that person's direction

* NOTE: Subsection 2 of section 23-13-02.3 was also amended by section 17 of Senate Bill No. 2056, chapter 69.

** NOTE: Section 39-01-15 was also affected by sections 2 and 6 of Senate Bill No. 2335, chapter 319, and section 1 of Senate Bill No. 2143, chapter 443.

and for that person's use, the distinguishing certificate or insignia specified in subsection 4 is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. Mobility A mobility impaired person as used in this section includes any person who has sustained an amputation or material disability of either or both legs, or who has been otherwise impaired in any manner rendering it difficult and burdensome for that person to walk lost the use of one or both legs; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; or has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest.
3. The registrar shall appoint a three-member committee. The committee must include two mobility impaired persons and one qualified physician. The terms of membership on the committee are three years, staggered so that one member is appointed each year. The initial membership of the committee must be appointed to terms of up to three years to provide for the initial staggering of terms under this subsection. The committee shall ~~develop~~ review guidelines for qualification for and issuance of a special identifying certificate or insignia for use in this state.
4. The registrar of motor vehicles ~~shall~~ may issue, for a fee of ~~two~~ three dollars per year or part of a year, a special identifying certificate ~~or insignia for a marked motor vehicle~~ to any mobility impaired applicant upon submission by the applicant of a completed application and a ~~certificate~~ written statement issued by a qualified physician to the registrar that the applicant is a mobility impaired person within the ~~meaning~~ criteria of subsection 2. The application must include the information required by the ~~committee~~ registrar. The ~~physician~~ physician's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate ~~or insignia~~ is valid for a period, not to exceed three years, as determined by the registrar. ~~The registrar shall determine the form and size of the certificate or insignia and~~ A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be at least five and one-half inches [13.97 centimeters] in height and eight and one-half inches

[21.59 centimeters] in width and must bear, in blue on white, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the registrar. The registrar shall adopt rules governing the issuance of the certificate ~~or insignia~~. ~~Of~~. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the registrar for a fee of three dollars upon application supported by a physician's statement. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's statement that the extension is warranted. The registrar shall determine the form and size of the temporary certificate.

5. Two dollars of each fee for issuance of a certificate ~~or insignia~~ under this section, ~~one dollar~~ must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate ~~or insignia~~. The rest of the fee must be deposited in the ~~general~~ state treasury and credited to the employment of people with disabilities fund ~~for use, subject to legislative appropriation, by~~. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of the ~~handicapped~~ people with disabilities of the governor's council on human resources for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement ~~certificate~~. The person shall furnish proof satisfactory to the registrar that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
6. A certificate issued under this section must be prominently displayed on the left-hand dashboard of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility impaired person or another person for the purposes of transporting the mobility impaired person. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.
- 5- 7. An applicant may appeal a decision denying issuance of the certificate ~~or insignia~~ to the registrar of motor vehicles. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the registrar for purposes of deciding the appeal. The registrar shall affirm or reverse the decision to deny issuance of the certificate ~~or insignia~~ within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.
- 6- 8. If the police of any municipality or any other political subdivision ~~shall find a law enforcement officer finds that such~~ the certificate ~~or insignia~~ is being improperly used, ~~they the~~ officer may report to the registrar of motor vehicles any such violation and the registrar may, in ~~his~~ the registrar's discretion, remove the privilege. Any person who is not mobility impaired and who exercises the privileges granted a mobility impaired person

under subsection 1 ~~shall be~~ is guilty of an infraction for which a fine of one hundred dollars must be imposed.

~~7-~~ 9. Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by mobility impaired persons, those reserved spaces shall be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the ~~space~~ spaces reserved ~~shall~~ must also be indicated by ~~signs or other suitable means~~ official signs approved by the commissioner bearing the internationally accepted symbol of access for the mobility impaired which indicate, through the use of arrows, the total width of the reserved area. The sign must indicate that unauthorized use of the space is an infraction for which a fine of one hundred dollars must be imposed. For particular events, a public or a private agency may reserve additional parking spaces for use by motor vehicles operated by mobility impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. ~~The~~ A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility impaired parking space is sufficient basis for the enforcement of this section. A law enforcement agency of any city or any other political subdivision officer may enforce the provisions of this subsection section in any parking lot or parking facility that is generally open to the public, whether publicly or privately owned.

~~8-~~ 10. ~~No~~ A person may not stop, stand, or park any vehicle in any designated parking space ~~which that~~ is reserved for the mobility impaired on any state charitable or penal institution property or on the state capitol grounds unless the vehicle displays a mobility impaired identification certificate or insignia issued by the registrar of motor vehicles to a mobility impaired person. A mobility impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility impaired person. A vehicle may temporarily use a space reserved for mobility impaired persons without a mobility impaired certificate for the purpose of loading and unloading mobility impaired persons. A violation of this subsection is an infraction for which a fine of one hundred dollars must be imposed.

11. Any motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of mobility impaired persons must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.

* SECTION 3. AMENDMENT. Section 39-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.2. Special plates for **physically handicapped** mobility impaired persons. The registrar of motor vehicles ~~shall may~~ issue, without

* NOTE: Section 39-04-10.2 was also amended by section 43 of Senate Bill No. 2056, chapter 69.

charge, upon application and payment of the regular license fee, plates marked with a ~~special identifying insignia~~, the internationally accepted symbol, ~~or design making them distinctly different from other number plates of access for the mobility impaired, to any physically handicapped mobility impaired applicant upon submission by the applicant of a certificate written statement issued by a qualified physician to the registrar that the applicant is a physically handicapped mobility impaired person within the meaning of subsection 2 of section 39-01-15.~~ The registrar shall determine the form and size of the ~~insignia, symbol, or design,~~ and shall ~~promulgate adopt rules and regulations governing the issuance thereof of the plate.~~

* SECTION 4. AMENDMENT. Subsection 7 of section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For a violation of ~~subsection 6 of section 39-01-15; any municipal ordinance equivalent to subsection 6 of section 39-01-15; or any traffic parking regulations, except a violation of subsection 9 of section 39-01-15,~~ on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

** SECTION 5. AMENDMENT. Section 39-07-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07.1. Provision of envelopes for traffic and parking violations on state charitable or penal institution property or state capitol grounds. Preprinted envelopes must be provided for any person who elects to post bond by mail, pursuant to section 39-06.1-02, for a violation of ~~subsection 6 of section 39-01-15 or~~ any state traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds.

*** SECTION 6. REPEAL. Subsection 3 of section 39-01-15 of the North Dakota Century Code is hereby repealed.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective on July 1, 1992.

Approved April 28, 1989
Filed April 28, 1989

* NOTE: Subsection 7 of section 39-06.1-06 was also amended by section 44 of Senate Bill No. 2056, chapter 69.

** NOTE: Section 39-07-07.1 was also amended by section 45 of Senate Bill No. 2056, chapter 69.

*** NOTE: Section 39-01-15 was also affected by sections 2 and 6 of Senate Bill No. 2335, chapter 319, and section 1 of Senate Bill No. 2143, chapter 443.

CHAPTER 320

HOUSE BILL NO. 1190
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

HEALTH CARE FACILITY RECEIVERS

AN ACT to create and enact chapter 23-16.1 of the North Dakota Century Code, relating to appointment of receivers for licensed health care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-16.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the state department of health and consolidated laboratories.
2. "Health care facility" means those facilities licensed under chapter 23-16.

23-16.1-02. Conditions for appointment of receiver. If the department has revoked the license of a health care facility, or if the operator of a health care facility has requested, the department may file a petition with the district court to place the health care facility under the control of a receiver if necessary to protect the health or safety of patients or residents at the health care facility. The court may grant the petition upon a finding that the health or safety of the patients or residents at the health care facility would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. This finding may be based upon evidence concerning the physical plant or the program and services offered by the health care facility, but not solely upon evidence that a health care facility has been denied a license to operate as a health care facility or has had a previously issued license revoked.

23-16.1-03. Appointment of receiver. The court shall appoint as receiver the state health officer who shall designate a qualified individual, not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the health care facility to maintain and operate the health care facility and to attempt to correct the conditions that constitute a threat to the patients or residents. The receiver may not liquidate the assets of the health care facility.

23-16.1-04. Termination of receivership. The receivership must be terminated when the receiver and the court certify that the conditions which

prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of an election by the owner or owners to discontinue operation, when the patients or residents are safely placed or provided services in the health care facility.

23-16.1-05. Accounting. Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 321

SENATE BILL NO. 2075
(Senators Moore, Todd)
(Representative A. Olson)

RADIOACTIVE WASTE COMPACT REPEAL

AN ACT to repeal chapter 23-20.4 of the North Dakota Century Code and chapter 297 of the 1985 Session Laws, relating to the Rocky Mountain and Dakota interstate low-level radioactive waste management compacts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 23-20.4 of the 1987 Supplement to the North Dakota Century Code and chapter 297 of the 1985 Session Laws are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 322

SENATE BILL NO. 2076
(Senators Moore, Todd)
(Representatives Mertens, A. Olson)

RADIOACTIVE WASTE DISPOSAL COMPACT

AN ACT to enter into the southwestern low-level radioactive waste disposal compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Southwestern low-level radioactive waste disposal compact. The southwestern low-level radioactive waste disposal compact is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. COMPACT POLICY AND FORMATION

The party states hereby find and declare all of the following:

1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b - 2021j), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
2. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.
3. It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.
4. It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.
5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

1. "Commission" means the southwestern low-level radioactive waste commission established in article III of this compact.
2. "Compact region" or "region" means the combined geographical area within the boundaries of the party states.
3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if the state hosts a disposal facility.
4. "Generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.
5. "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.
6. "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.
7. "Host state" means a party state in which a regional disposal facility is located or being developed. California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.
8. "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.
9. "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:
 - a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))).
 - b. The waste is not uranium mining or mill tailings.
 - c. The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021c(b)).
 - d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.
10. "Major generator state" means a party state that generates ten percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal

facility. If no party state other than California generates at least ten percent of the total amount, "major generator state" means the party state that is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

11. "Management" means collection, consolidation, storage, packaging, or treatment.
12. "Operator" means a person who operates a regional disposal facility.
13. "Party state" means any state that has become a party in accordance with article VII of this compact.
14. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
15. "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee observes, monitors, and carries out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.
17. "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.
18. "Transporter" means a person who transports low-level radioactive waste.
19. "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

ARTICLE III. THE COMMISSION

1. There is hereby established the southwestern low-level radioactive waste commission.
 - a. The commission consists of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.
 - b. The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one percent of

the membership on the commission. The host state's additional members must be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

- c. If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who must be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to subdivision d.
 - d. The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of county commissioners of the host county.
 - e. In recommending and appointing the host county member pursuant to subdivision d, the board of county commissioners and the governor shall give first consideration to recommending and appointing the members of the board of county commissioners in whose district the regional disposal facility is located or being developed. If the board of county commissioners of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.
 - f. The host county member is subject to confirmation by the senate of the host state and serves at the pleasure of the governor of the host state.
2. The commission is a legal entity separate and distinct from the party states and is liable for its actions. Members of the commission are not personally liable for actions taken in their official capacity. The liabilities of the commission are not to be deemed liabilities of the party states.
 3. The commission must conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action must be governed by the laws of the host state. The commission must be located in the capital city of the host state in which the regional disposal facility is located.
 4. The commission's records are subject to the host state's public records law, and the meetings of the commission must be open and public in accordance with the host state's open meeting law.
 5. The commission members are public officials of the appointing state and are subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members must be compensated according to the appointing state's law.

6. Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the commission is necessary for the commission to take any action.
7. The commission has all of the following duties and authority:
 - a. The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.
 - b. The commission shall meet at least once a year and otherwise as business requires.
 - c. The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge must be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and must be collected by the operator of the disposal facility.

The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge must be sufficient to establish and maintain a reasonable level of funds for all of the following purposes:

- (1) The activities of the commission and commission staff.
 - (2) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This paragraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.
 - (3) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.
- d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3 of subdivision c and surcharges pursuant to subdivision c of subsection 5 of article IV must be transmitted on a monthly basis to the host state for distribution to the proper accounts.
 - e. The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.

- f. The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the commission.
- g. The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.
- h. The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal government or a state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this subdivision and the identity of the donor or grantor must be detailed in the annual report of the commission.

However, the host state is entitled to receive, for the uses specified in subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph A of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code.

- i. The commission shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the commission, including an annual report to be submitted on or before January fifteenth of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods that are alternative technologies to the shallow land burial of low-level radioactive waste.
- j. The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- k. The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.
- l. The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- m. The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- n. The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission may bind a party state.

- o. The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- p. The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- q. The commission must be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- r. The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- s. The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
 - (1) The commission approves the importation agreement by a two-thirds vote of the commission.
 - (2) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- t. The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes is effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.
- u. The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.
- v. The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

1. There must be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.
2. Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities and each party state must have access to any regional disposal facility without discrimination.
3. a. Upon the effective date of this compact, California must serve as the host state and must comply with the requirements of subsection 5 for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration is at the option of California.

If California does not extend this obligation, the party state, other than California, which is the largest major generator state must then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility must also run for thirty years from the date the second regional disposal facility begins operations.

- b. The host state may close its regional disposal facility when necessary for public health or safety.
4. The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b - 2021j).
5. A host state shall do all of the following:
 - a. Cause a regional disposal facility to be developed on a timely basis.
 - b. Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.
 - c. Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:
 - (1) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
 - (2) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.
 - (3) Assure that charges are assessed without discrimination as to the party state of origin.

- d. Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.
 - e. The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
6. Each party state is subject to the following duties and authority:
- a. To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures must include all of the following requirements:
 - (1) Periodic inspections of packaging and shipping practices.
 - (2) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
 - (3) Appropriate enforcement actions with respects to violations.
 - b. A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by subdivision a.
 - c. To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibiting future shipments to the regional disposal facility.
 - d. Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.
 - e. Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.
 - f. Each party state may rely on the good faith performance of the other party states to perform those acts that are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

- g. Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.
- h. Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states may be disposed of in the regional disposal facility, except as provided in subdivision s of subsection 7 of article III.
- i. Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to paragraph 2 of subdivision c of subsection 7 of article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state is liable for any harm or damage resulting from a regional facility not located within the state.

ARTICLE V. APPROVAL OF REGIONAL FACILITIES

A regional disposal facility must be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

- 1. No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in subdivisions t and u of subsection 7 of article III.
- 2. No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in subdivisions s, t, and u of subsection 7 of article III.
- 3. Violations of this section must be reported to the appropriate law enforcement agency within the party state's jurisdiction.
- 4. Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

ARTICLE VII. ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

- 1. Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislative assemblies of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish

all terms and conditions for the entry of any state, other than the states named in this subsection, as a member of this compact.

2. Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened after the executive order is issued, unless before the adjournment the legislative assembly enacts this compact.
3. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal does not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subsection, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal does not become effective until five years after the effective date of the repealing legislation.

4. A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by this compact.
5. This compact takes effect upon the enactment by statute by the legislatures of California and at least one other eligible state and upon the consent of Congress and remains in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

1. This compact must be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state may not be infringed unnecessarily.
2. This compact does not affect any judicial proceeding pending on the effective date of this compact.
3. If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.
4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:
 - a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

- b. An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021).
- 5. Nothing in this compact confers any new authority on the states or commission to do any of the following:
 - a. Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
 - b. Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.
 - c. Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 323

HOUSE BILL NO. 1349
(Representatives Tollefson, Haugland)
(Senator Maxson)

CEMETERY PERPETUAL CARE FUNDS

AN ACT to amend and reenact section 23-21.1-03 of the North Dakota Century Code, relating to cemetery perpetual care funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-21.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-21.1-03. Creation of perpetual care fund. Any organization subject to the provisions of this chapter which is organized or commences business in the state of North Dakota and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on the effective date of this chapter shall be five thousand dollars. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by chapter 59-04 relating to the administration of trust estates. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and consolidated laboratories and the commissioner of banking and financial institutions.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1066.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.

3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.
5. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

The initial perpetual care fund established for any perpetual care cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars. When the perpetual irrevocable trust fund equals fifty thousand dollars, an additional special trust fund shall be established into which fifty percent of the deposits required to be made into the irrevocable trust fund shall be made until the amount deposited into such special trust fund shall equal twenty-five thousand dollars. Thereafter, one hundred percent of the required deposit shall again be deposited in the perpetual irrevocable trust fund. The funds in the special trust fund may be used for the purpose of repaying or recouping the initial twenty five thousand dollar deposit, if such deposit were made. The administration of, and payments out of, the special trust fund shall be under the jurisdiction of the district court. Under special, unusual, or compelling circumstances and upon proper application to a district court, said court may in its discretion order withdrawals to be used only for permanent improvements.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 324

HOUSE BILL NO. 1108
(Committee on Agriculture)
(At the request of the State Department of
Health and Consolidated Laboratories)

VECTOR CONTROL DISTRICT DIRECTORS

AN ACT to amend and reenact section 23-24-05 of the North Dakota Century Code, relating to appointments to the board of commissioners of a vector control district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-24-05 of the 1987 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 the district or a part of the district is situated, a three-member board of commissioners of the vector control district must be appointed as provided by this section. Any resident freeholder in the district is eligible for appointment to the board of commissioners thereof. The term of commissioners first appointed 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 must be made by ~~the state health council from a list of names submitted to the council~~ by the board of county commissioners 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~~ appoints 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~~ appoints 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 a lesser sum as the board 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.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 325

HOUSE BILL NO. 1133
(Committee on State and Federal Government)
(At the request of the State Department of
Health and Consolidated Laboratories)

ASBESTOS ABATEMENT

AN ACT to amend and reenact sections 23-25-01 and 23-25-03.1 of the North Dakota Century Code, relating to air pollution control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-01 of the 1987 Supplement to 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. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal, and inspection of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material; and. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable 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 an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet

[0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their 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.
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. AMENDMENT. Section 23-25-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-03.1. ~~Certification~~ licensing of asbestos contractors ~~and, certification of their workers, and certification of public employees engaged in asbestos abatement.~~ The department is charged with the responsibility of administering and enforcing a ~~certification~~ licensing program for asbestos contractors, and a certification ~~program~~ for their workers and for public employees engaged in asbestos abatement, 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~~ and public employees performing asbestos abatement.
2. To establish standards and procedures for the ~~certification~~ licensing of contractors, and the ~~certification~~ of their workers and of public employees, engaging in the abatement of friable asbestos materials and to establish performance standards for asbestos abatement, ~~such.~~ The performance standards ~~to will~~ 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 and renewal fees for ~~certifying~~ licensing asbestos contractors and certifying ~~their workers and to~~

establish examination ~~and renewal~~ fees for asbestos workers and public employees engaged in asbestos abatement 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 9, 1989
Filed March 9, 1989

CHAPTER 326

HOUSE BILL NO. 1039
(Legislative Council)
(Interim Budget Committee on Institutional Services)

AMBULANCE SERVICE CARE BY VOLUNTEERS

AN ACT to amend and reenact section 23-27-04.1 of the North Dakota Century Code, relating to emergency care or services rendered by officers, employees, or agents of ambulance service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-27-04.1. Emergency care or services 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 a volunteer, who in good faith renders emergency care or services at the scene of an accident, disaster, or other emergency, 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 the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered provided that the fees do not exceed twenty-four hundred dollars in any calendar year. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 327

HOUSE BILL NO. 1040
(Legislative Council)
(Interim Budget Committee on Institutional Services)

AMBULANCE SERVICE STATE ASSISTANCE

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to state assistance to licensed ambulance services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

Licensed ambulance services - State assistance. The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ambulance services licensed under this chapter as determined by the branch and financially shall assist certain ambulance services licensed under this chapter as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of licensed ambulance services. To qualify for financial assistance for equipment, a licensed ambulance service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The health services branch may establish minimum and maximum amounts of financial assistance to be provided an ambulance service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. The health services branch shall distribute the funds on June thirtieth of each year. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the health services branch give priority to training grants over equipment grants.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 328

HOUSE BILL NO. 1112
(Committee on Natural Resources)
(At the request of the State Department of
Health and Consolidated Laboratories)

ENVIRONMENTAL EMERGENCIES

AN ACT to provide for recovery of reasonable and necessary costs for environmental assessment and remediation as a result of environmental emergencies in violation of North Dakota environmental statutes and rules and to establish an environmental emergency response fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Environmental emergency cost recovery. The state department of health and consolidated laboratories may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1. As used in this Act "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated prior to identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

SECTION 2. Environmental quality restoration fund. There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the state department of health and consolidated laboratories and may be used by the state department of health and consolidated laboratories for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis.

SECTION 3. Rules adoption. The state department of health and consolidated laboratories may adopt rules to implement this Act.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 329

HOUSE BILL NO. 1262
(Representatives Hokana, Dalrymple, Nicholas)
(Senators Dotzenrod, Kelsh, Thane)

PLASTIC PRODUCTS AND SOYBEAN INK

AN ACT to provide for the labeling of certain plastic products, to require certain plastic products to be degradable, and to provide for standards for rates of degradation; to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to the purchase of soybean-based inks and starch-based plastics; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 4 of this Act:

1. "Degradable" means capable of being reduced to environmentally benign subunits under the action of normal environmental forces, including biodegradation, photodegradation, chemical degradation, or hydrolysis within reasonable time lines specific for waste types and waste management methods.
2. "Department" means the state department of health and consolidated laboratories.
3. "Label" means a molded imprint or raised symbol.
4. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.
5. "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of at least sixteen fluid ounces [453.60 grams] but less than five gallons [18.93 liters].
6. "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominately of plastic resin, and having a relatively inflexible finite shape or form with a capacity of at least eight ounces [226.80 grams] but not more than five gallons [18.93 liters].

SECTION 2. Degradation rates - Byproducts of degradation. The department, in cooperation with the American society for testing and materials, the United States environmental protection agency, and the national institute of standards and technology, shall adopt rules regarding the required rates of degradation and allowable byproducts of degradation. The department may require test data to demonstrate that a plastic is degradable including the rate of degradation and the by-products of the degradation.

SECTION 3. Plastic bottles and containers - Label - Penalty.

1. All plastic bottles and rigid plastic containers sold in this state after December 31, 1991, must have a label indicating the plastic resin used to produce the bottle or container. The numbers and letters used on the label must be at least one-half-inch [12.7-millimeters] high and must appear on the bottom of the plastic bottle or rigid plastic container. The label must consist of the following numbers, placed inside three triangulated arrows, and letters placed immediately below the three triangulated arrows depending on the plastic resin used. The triangulated arrows must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow must be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints must depict a clockwise path around the code number. The numbers and letters used must be as follows:
 - a. 1 PETE if the product used is polyethylene terephthalate.
 - b. 2 HDPE if the product used is high density polyethylene.
 - c. 3 V if the product used is vinyl.
 - d. 4 LDPE if the product used is low density polyethylene.
 - e. 5 PP if the product used is polypropylene.
 - f. 6 PS if the product used is polystyrene.
 - g. 7 OTHER if the product used is multilayer.
 - h. 8 D if the product used is degradable.
2. The department shall maintain a list of the label code contained in this section and shall provide a copy of the list to any person upon request.
3. Any person who violates this section is guilty of an infraction.

SECTION 4. Degradable plastic rings - Penalty. No person may sell or offer for sale containers connected to each other by plastic rings unless the plastic rings are degradable and bear a distinguishing symbol. Any manufacturer of plastic rings used to connect containers to each other who sells or offers for sale or provides for the sale or offer for sale of those rings in this state shall design a distinguishing symbol indicating that the devices are degradable. The manufacturer must register the distinguishing symbol with the department and provide the department with a sample of the plastic rings. Any person who violates this section is guilty of a class B misdemeanor.

SECTION 5. A new section to chapter 54-44.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Specification for paper products and inks. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products, are encouraged, whenever possible, when purchasing newsprint printing services, to specify the use of soybean-based ink. By July 1, 1990, at least fifteen percent of the garbage can liners purchased by the office of management and budget, the institutions of higher education, or a state agency or institution to which authority to purchase has been delegated must be starch based. The percentage of starch-based garbage can liners purchased must increase by five percent annually until at least fifty percent of the garbage can liners purchased are starch based. The office of management and budget shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks. The North Dakota corn growers association and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of starch-based plastics and in collecting data on the purchase of starch-based plastics. The North Dakota soybean council and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks. In requesting bids for paper products, starch-based plastic products, and soybean-based inks, the office of management and budget must request information on the recycled content of such products.

Approved April 10, 1989

Filed April 11, 1989