

OCCUPATIONS AND PROFESSIONS

CHAPTER 397

SENATE BILL NO. 2168

(Finance and Taxation Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSING AND REGULATION

AN ACT to amend and reenact subsection 4 of section 43-07-01, sections 43-07-02, 43-07-04, 43-07-08, 43-07-09, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to the licensure and regulation of contractors by the secretary of state; to repeal section 43-07-11 of the North Dakota Century Code, relating to a contractor's bond; and to provide a civil penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A "public contract" is a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of five hundred two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of five hundred two thousand dollars.

SECTION 2. AMENDMENT. Section 43-07-02 of the North Dakota Century Code is amended and reenacted as follows:

43-07-02. License required - Enjoining operation without license. No person may engage in the business nor act in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred two thousand dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the original contract or subcontract cost, value, or price exceeds the sum of five hundred two thousand dollars, unless the person is properly licensed.

SECTION 3. AMENDMENT. Section 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe,

an application under oath containing a statement of the applicant's experience and qualifications as a contractor; ~~and the names of three persons who are knowledgeable about the applicant's experience and qualifications.~~ A bond, as prescribed in ~~section 43-07-11,~~ and a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter, and must specify the class of license sought. No sooner than ten days after sending written notice to a contractor at the contractor's last known address, the registrar shall revoke the license of any contractor who fails to maintain liability insurance coverage required by this section or by section 43-07-10, or who fails to file, renew, or properly amend any fictitious name certificate required by chapter 45-11 for any contractor. Any person refused a license by the registrar or whose license is revoked pursuant to this section may appeal to the district court of Burleigh County, if a nonresident, or to the district court of the county of residence, if a resident of this state.

SECTION 4. AMENDMENT. Section 43-07-08 of the North Dakota Century Code is amended and reenacted as follows:

43-07-08. Exceptions. This chapter does not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto.
3. ~~Any person who contracts to furnish labor only and for an amount not in excess of five thousand dollars.~~

SECTION 5. AMENDMENT. Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license. ~~The~~ Within fifteen days from the date of application, the registrar shall ~~may~~ investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the ~~expiration of ten days after the date the registrar receives all documentation necessary to obtain a license. A copy of the required documentation sent by facsimile also commences the counting of the ten-day waiting period but a license may not be issued until original copies of all the documents and the appropriate fee is received by the registrar.~~ The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending February first.

SECTION 6. AMENDMENT. Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Revocation of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, accompanied by two copies of which includes a listing of each contract or subcontract obtained by the licensee during the preceding fiscal calendar year in this state over the amount of ten thousand dollars, the nature of the work contracted or subcontracted, and, if a performance bond was required by the contract, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward one a copy of the list to the state tax commissioner and shall also indicate whether the license of the applicant was renewed by the registrar. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of ~~February~~ March of each ~~successive fiscal~~ year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued to the contractor, the new class license may be issued only upon the showing, under the terms and conditions, and upon the payment of the fee required for the issuance of an original the license of the class applied for. All certificates of renewal in which the applicant does not apply for a change in the class of license must be issued by the registrar to the applicant when the application is properly filed and the renewal fee is paid. If any contractor fails to file an application for a certificate of renewal when due, the registrar shall revoke the contractor's license. The registrar shall notify by mail a contractor whose license is revoked of the revocation within sixty days after the filing deadline. The contractor may then renew the license within ninety days after the filing deadline by paying a penalty fee of ~~twenty-five~~ seventy-five percent of the license renewal fee set forth in section 43-07-07, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation and waiting period prescribed authorized in section 43-07-09. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

SECTION 7. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license cancellation. Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:
 - a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or

- b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
 3. The doing of any ~~willful~~ fraudulent act by the licensee as a contractor in consequence of which another is injured ~~substantially~~ in an amount exceeding the amount set forth in subsection 1 of section 27-08.1-01.
 4. The making of any false statement in any application for a license or renewal thereof.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 8. AMENDMENT. Section 43-07-18 of the North Dakota Century Code is amended and reenacted as follows:

43-07-18. Penalty. Any person acting in the capacity of a contractor within the meaning of this chapter without a license as herein provided is guilty of a class B misdemeanor. Whether a person is subjected to criminal prosecution under this section, and in addition to the license fee that may be assessed when the person makes application for a license, the person may be assessed a civil penalty by the registrar, following written notice to the person of an intent to assess the penalty, in an amount not to exceed the amount set forth in section 43-07-07. Any civil penalty must be assessed and collected before a person is issued a license. The assessment of a civil penalty may be appealed in the same manner as appeals under section 43-07-04, but only on the basis that the registrar's administrative determination that the person acted as contractor when not licensed as a contractor was clearly erroneous.

¹⁹⁸ **SECTION 9. REPEAL.** Section 43-07-11 of the North Dakota Century Code is repealed.

Approved March 1, 1995
Filed March 1, 1995

¹⁹⁸ Section 43-07-11 was also amended by section 15 of House Bill No. 1452, chapter 443.

CHAPTER 398**HOUSE BILL NO. 1102**

(Representative Soukup)

(At the request of the Department of Transportation)

CONTRACTOR'S BID REQUIREMENT EXEMPTIONS

AN ACT to amend and reenact section 43-07-12 of the North Dakota Century Code, relating to exemptions from contractor's bid requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-12 of the North Dakota Century Code is amended and reenacted as follows:

43-07-12. Bids to show license issued. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter must contain a copy of the license or certificate or renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract may be awarded to any contractor unless ~~he~~ the contractor is the holder of a license in the class within which the value of the project falls as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read nor considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation; ~~or~~
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

Approved March 7, 1995

Filed March 7, 1995

CHAPTER 399**HOUSE BILL NO. 1361**

(Representatives Clayburgh, Glassheim, Poolman)
(Senators St. Aubyn, W. Stenehjem)

**PUBLIC CONTRACT WITHHOLDING BY LABOR
COMMISSIONER**

AN ACT to amend and reenact sections 43-07-20 and 43-07-21 of the North Dakota Century Code, relating to employment preferences for North Dakota residents and veterans and to the withholding of a portion of a public contract price.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-20 of the North Dakota Century Code is amended and reenacted as follows:

43-07-20. Employment preference in contract. In all contracts, except those which involve federal-aid funds and where a preference or discrimination would be contrary to a federal law or regulation, hereafter let for state, county, city, school district, or township construction, repair, or maintenance work under any laws of this state, there shall be inserted a provision by which the contractor must give preference to the employment of bona fide North Dakota residents, as determined by section 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in section 37-19.1-01, who are deemed to be qualified in the performance of ~~said that~~ work. ~~Such The~~ preference shall not apply to engineering, superintendence, management, or office or clerical work.

No contract shall be let to any person, firm, association, cooperative, corporation, or limited liability company refusing to execute an agreement containing the aforementioned provisions.

SECTION 2. AMENDMENT. Section 43-07-21 of the North Dakota Century Code is amended and reenacted as follows:

43-07-21. Penalty - Injunction proceedings. Any person violating any provisions of section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal grounds for a court, on proper application by the commissioner of labor, to grant an injunction without requiring the posting of a bond or undertaking. ~~All contracts must provide that one thousand dollars of the contract price is to be withheld in addition to any other withholding until it has been determined by the commissioner of labor that no action or fines are pending.~~

Approved March 21, 1995
Filed March 21, 1995

CHAPTER 400**SENATE BILL NO. 2133**

(Industry, Business and Labor Committee)
(At the request of the State Electrical Board)

ELECTRICAL SERVICES ADVERTISING

AN ACT to amend and reenact subsection 1 of section 43-09-09.2 of the North Dakota Century Code, relating to advertising of electrical services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-09-09.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in this section, where an electrical license is required under section 43-09-09 or by local ordinance, no person ~~offering electrical services may advertise as an electrical contractor, master electrician, or class B electrician unless the person employs a licensed journeyman electrician, or the person is a licensed master electrician or class B electrician. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989 may advertise to contract for~~ electrical services without being licensed as or being associated with a class B or master electrician unless that person intends to contract the electrical services with a licensed electrical contractor.

Approved April 11, 1995
Filed April 12, 1995

CHAPTER 401**HOUSE BILL NO. 1407**
(Representatives Galvin, Mahoney)**COSMETOLOGY LICENSES**

AN ACT to create and enact two new sections to chapter 43-11 of the North Dakota Century Code, relating to master esthetician, master manicurist and homebound licenses; and to amend and reenact sections 43-11-01, 43-11-21, subsection 1 of section 43-11-26, and subdivision a of subsection 1 of section 43-11-28 of the North Dakota Century Code, relating to cosmetology licenses and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology is defined and includes, but otherwise is not limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.
4. "Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.
5. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

6. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
7. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- ~~7~~ 8. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~8~~ 9. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- 9 10. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~10~~ 11. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~11~~ 12. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~12~~ 13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.
- ~~13~~ 14. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~14~~ 15. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
16. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-21 of the North Dakota Century Code is amended and reenacted as follows:

43-11-21. Operator's license - Examination required - Application - Examination - Fees. Each person who desires to secure an operator's license shall file with the secretary of the board a written application under oath on a form supplied by the board. The application must be accompanied by:

1. A health certificate ~~issued~~ signed by a licensed physician;
2. Satisfactory proof of the educational and moral qualifications required of a student;

3. An examination fee and kit rental fee as may be fixed by the board pursuant to section 43-11-28;
4. Satisfactory proof that the applicant has completed the required training in a school of cosmetology; and
5. A fee for original licensure as required by section 43-11-28.

SECTION 3. AMENDMENT. Subsection 1 of section 43-11-26 of the North Dakota Century Code is amended and reenacted as follows:

1. Furnishing to the board evidence of being at least eighteen years of age and having practiced as a licensed operator ~~in this state~~ for at least one hundred twenty-five days.

SECTION 4. Two new sections to chapter 43-11 of the North Dakota Century Code are created and enacted as follows:

License - Master esthetician and master manicurist. The board may issue annual licenses for a master esthetician and a master manicurist. The board shall determine the qualifications for licensure and annual license fees for the licenses.

Homebound license. The board may issue annual homebound licenses. The board shall determine the qualifications for licensure and annual license fees for a homebound license.

SECTION 5. AMENDMENT. Subdivision a of subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Cosmetology salons <u>Salons</u> , original registration	\$ 75.00
(2) Cosmetology salons <u>Salons</u> , annual renewal	\$ 25.00
(3) School of cosmetology, original registration	\$500.00
(4) School of cosmetology, annual renewal	\$200.00
(5) Operator, original license	\$ 10.00
(6) Operator, annual renewal	\$ 10.00
(7) Manager-operator, original license	\$ 20.00
(8) Manager-operator, annual renewal	\$ 15.00
(9) Instructor, original license	\$ 30.00
(10) Instructor, annual renewal	\$ 15.00
(11) Demonstrators, original license	\$ 25.00
(12) Demonstrators, annual renewal	\$ 15.00
(13) Reciprocity license fee	\$100.00
(14) Registration fee for student instructor	\$ 10.00
(15) Duplicate license	\$ 5.00
(16) Penalty fee for late renewal	\$ 10.00
(17) Certification fee	\$ 15.00

Approved April 7, 1995
 Filed April 7, 1995

CHAPTER 402

SENATE BILL NO. 2404

(Senators Solberg, Freborg, Grindberg)
(Representatives DeKrey, Poolman, Sitz)

COSMETOLOGY PRACTICE EXEMPTIONS

AN ACT to create and enact a new subsection to section 43-11-02 of the North Dakota Century Code, relating to exemptions from cosmetology regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-11-02 of the North Dakota Century Code is created and enacted as follows:

Services provided in a licensed hospital or a nursing home by a person practicing cosmetology on a volunteer basis without compensation or by a nurse's assistant.

Approved March 31, 1995

Filed April 3, 1995

CHAPTER 403**SENATE BILL NO. 2192**

(Human Services Committee)

(At the request of the North Dakota Board of Nursing)

NURSING PRACTICE AND LICENSING

AN ACT to amend and reenact sections 32-03.1-06, 43-12.1-01, 43-12.1-02, 43-12.1-03, 43-12.1-04, 43-12.1-05, 43-12.1-06, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, 43-12.1-12, 43-12.1-13, 43-12.1-14, 43-12.1-15, and 43-17-02 of the North Dakota Century Code, relating to the practice of nursing; to repeal sections 43-12-26.1, 43-12-27, 43-12.1-08.1, 43-12.1-13.1, 43-12.1-13.2, and 43-12.1-14.1 of the North Dakota Century Code, relating to definitions applicable to and duties of the board of nursing, the practice of nursing, and the disciplining of persons assisting nurses; to provide for a joint rulemaking committee; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-03.1-06. Limited repealer. This chapter supersedes any conflicting provision of law which is inconsistent with this chapter except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, ~~43-12.1-13.1, 43-12.1-13.2~~ 43-12.1-12, 43-17-37, and 43-17-38.

SECTION 2. AMENDMENT. Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-01. Statement of policy. The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. ~~It is essential to govern qualifications for nursing practice with requirements for the maintenance of high standards and to state sanctions by which an illicit, unqualified, dishonest person or one that is otherwise against the public interest can be disciplined. The legislative assembly further declares that it is the policy of this state to regulate through the board of nursing the practice of nursing, those engaged in licensed nursing practice, and all persons who assist in the practice of nursing. A person who practices or offers to practice nursing or who represents that the person is licensed under this chapter or is qualified to assist in the practice of nursing without qualifying under this chapter endangers the public health. This chapter must be liberally construed in order to carry out its purposes and objectives. The legislative assembly recognizes that the practice of nursing is continually evolving and responding to changes within health care patterns and systems and recognizes the existence of overlapping functions within the practice of nursing and other providers of health care.~~

SECTION 3. AMENDMENT. Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Assistant to the nurse" means, without regard to agency title, a person who is authorized to perform nursing functions or nursing tasks legally delegated and supervised by a licensed nurse. "Advanced practice registered nurse" means a person who holds a current license to practice in this state as an advanced practice registered nurse and either has a graduate degree with a nursing focus or has completed the educational requirements in effect when the person was initially licensed.
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means one a person who holds a current license to practice in this state as a licensed practical nurse and either has met all legal requirements for licensure and holds a current license to practice in this state as a licensed practical nurse an associated degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.
4. "Licensee" means any person who has ever held a license; a temporary license; or a temporary permit to practice; or currently holds a license; a temporary license; or a temporary permit to practice as a registered nurse or a licensed practical nurse in this state. "Nurse" means any person currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.
5. The "practice of nursing as a licensed practical nurse" means the performance of those services; requiring the basic knowledge of biological science and technical skills; commonly performed by a licensed practical nurse under the direction of a registered nurse; licensed physician; or dentist for the purpose of:
 - a. The maintenance of health and prevention of illness.
 - b. The observation and nursing care of persons experiencing changes in their health processes.
 - c. Administering prescribed medications and treatments.
 - d. Teaching and evaluating health practices of patients.
 - e. Providing specialized nursing care when such service is authorized by the board through its rules and delegated by a registered nurse; physician; or dentist; to a licensed practical nurse who has had additional preparation or experience.

"Nurse assistant" means a person who is authorized by the board to perform nursing tasks delegated and supervised by a licensed nurse.
6. The "practice of nursing as a registered nurse" means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. Nursing includes the following acts, which may not be deemed to include acts of medical

diagnosis or treatment or the practice of medicine as defined in chapter 43-17:

- a. The maintenance of health and prevention of illness.
 - b. Diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of a medical the health care regimen as prescribed or authorized by a licensed physician or dentist by a health care practitioner licensed under title 43.
 - f. ~~The performance of such additional acts, including prescriptive practices under the supervision of a licensed physician, which are recognized by the nursing profession as proper to be performed by registered nurses who have had advanced preparation and are authorized by the board through its rules to perform such acts. For purposes of this subdivision:~~
 - (1) "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist. Prescriptive practices must be consistent with the scope of practice submitted by the registered nurse to obtain advanced licensure.
 - (2) "Supervision of a licensed physician" means performance under a contract with a licensed physician for review and acknowledgement of appropriate prescriptive practices for implementation by the registered nurse with advanced licensure who is authorized by the board to write a prescription to be filled by a licensed pharmacist.
7. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
8. "Registered nurse" means one a person who holds a current license to practice in this state as a registered nurse and either has met all legal requirements for licensure and holds a current license to practice in this state as a registered nurse a baccalaureate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.

SECTION 4. AMENDMENT. Section 43-12.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-03. License required - Title - Abbreviation. All persons who practice as a registered nurse or a practical nurse for direct or indirect compensation in this state must hold a current valid license from this state. A person who holds a current valid license to practice as a registered nurse in this state may use the title "registered nurse" and the abbreviation "R.N.". A person who holds a current valid license to practice as a practical nurse in this state may use the title "licensed practical nurse" and the abbreviation "L.P.N.". No other person may assume or claim any such title or abbreviations. Any person who provides nursing care to a resident of this state must hold a current license or registration issued by the board. It is unlawful for a person to practice nursing, offer to practice nursing, assist in the practice of nursing, or use any title, abbreviation, or designation to indicate that the person is practicing nursing or assisting in the practice of nursing in this state unless that person is currently licensed or registered under this chapter. A currently licensed advanced practice registered nurse may use titles approved by the board; a currently licensed registered nurse may use the abbreviation "R.N."; a currently licensed practical nurse may use the abbreviation "L.P.N."; and a nurse assistant with current registration may use the title identified by the employer. A person may not use the title "nurse" or be referred to as a "nurse" unless licensed by the board.

¹⁹⁹ SECTION 5. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who ~~give nursing assistance~~ perform nursing tasks in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state ~~who are~~ employed in this state by the United States government or ~~a bureau, division, or agency thereof~~ any of its bureaus, divisions, or agencies.
4. ~~Legally licensed nurses of~~ A nurse licensed by another state or Canada, whose employment requires ~~them~~ the nurse to accompany and care for a patient ~~who is~~ in transit for ~~medical treatment~~ health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. ~~A person who provides nursing care or performs nursing functions or nursing tasks for an immediate~~ a family member.
- 6- 7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.

¹⁹⁹ Section 43-12.1-04 was also amended by section 1 of Senate Bill No. 2239, chapter 404.

8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who is not licensed under this chapter and who provides medication administration according to individual needs and as part of an individual habilitation or case plan:
 - a. Within a developmental disabilities provider agency licensed under chapter 25-16;
 - b. Within a foster care provider agency licensed under chapter 50-11;
or
 - c. Through, or under contract with, a human service center licensed under chapter 50-06.

A licensed nurse may delegate medication administration to a person exempt under this section.

SECTION 6. AMENDMENT. Section 43-12.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-05. Board of nursing - Composition - Term of office. There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, three licensed practical nurses, and one public member. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. ~~The term of the public member must coincide with that of the governor.~~ Terms of licensed nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. ~~Two of the licensed nurse board member terms expiring June 30, 1989, must be filled by appointment or reappointment for terms of three years to provide for even distribution of terms of licensed nurse board members.~~ The members of the board holding office on the effective date of this Act may continue to serve as members for their respective terms.

SECTION 7. AMENDMENT. Section 43-12.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-06. Qualifications of board members.

1. Each registered nurse board member must be:
 - a. ~~A citizen of the United States; a resident of North Dakota for two years, and currently residing in North Dakota.~~
 - b. ~~A current holder of a valid North Dakota license to practice as a registered nurse.~~
 - c. ~~Experienced for at least five years in nursing and currently engaged in the practice of nursing in North Dakota.~~
2. Each licensed practical nurse board member must be:

- a. A citizen of the United States, a resident of North Dakota for two years, and currently residing in North Dakota.
 - b. A current holder of a valid North Dakota license to practice as a licensed practical nurse.
 - e. Experienced for at least five years as a licensed practical nurse and currently engaged in the practice of practical nursing in North Dakota.
3. Each public member must be a citizen of the United States, a resident of North Dakota for two years, and currently residing in North Dakota except any person or his or her spouse who:
- a. Is a licensee of any health occupation board.
 - b. Is an employee of any health care facility, agency, corporation, or limited liability company authorized to underwrite health care insurance.
 - c. Has financial interests in or is engaged in the governance and administration of a health care facility, agency, corporation, or limited liability company.
 - d. Is a salaried employee of state or federal agencies providing health care delivery.
1. Each registered nurse must be an eligible voting resident of this state, possess an unencumbered registered nurse license under this chapter, and be currently engaged in practice as a registered nurse.
 2. Each licensed practical nurse must be an eligible voting resident of this state, possess an unencumbered practical nurse license under this chapter, and be currently engaged in practice as a licensed practical nurse.
 3. Each public member must be an eligible voting resident of this state and have no employment, professional license, or financial interest with any health care entity.

Each member appointed to the board shall maintain the qualifications for appointment for the duration of the appointment. The governor may remove any member of the board for cause upon recommendation of two-thirds of the members of the board.

SECTION 8. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Powers and duties of the board. The board shall:

1. Maintain an office to conduct business.
2. Employ an executive director and such other professional and secretarial staff as may be required.
3. Establish fees and receive all moneys collected under this chapter.

4. Authorize all expenditures necessary for conducting the business of the board. Any balance of such fees after payment of expenditures is to be used in administering the provisions of this chapter.
5. Report all receipts and expenditures of said funds at the close of each fiscal year to the governor.
6. Establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies.
7. Conduct surveys as necessary of nursing education programs required to meet board standards.
8. Approve such nursing education programs which meet board standards.
9. Conduct a licensing examination at least once a year for entry into practice as a registered nurse or licensed practical nurse.
10. License candidates who qualify by examination or endorsement as registered nurses or licensed practical nurses.
11. Maintain a permanent register of the names of all persons to whom licenses to practice as a registered nurse or a licensed practical nurse are issued. Such register shall be open to public inspection.
12. Renew licenses periodically.
13. Adopt rules under chapter 28-32 for renewal of licenses after an absence of five years from the active practice of nursing.
14. Discipline licensees as necessary.
15. Establish standards for quality of practice for registered nurses and licensed practical nurses after consultation with the North Dakota state nurses association; the North Dakota licensed practical nurses association; and other professional nursing groups.
16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in advanced practice roles after consultation with the North Dakota state nurses association; the North Dakota licensed practical nurses association; and other recognized nursing specialty groups.
17. Execute any legitimate project pertaining to nursing education or practice.
18. Adopt such rules under chapter 28-32 as are necessary to carry out the provisions of this chapter. The board shall involve active participation of all appropriate state education agencies and representatives of public and proprietary institutions which are involved in and responsible for funding or operation of such programs; in the establishment of such standards and approval of programs.
19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a

period of four consecutive years or for a longer period if determined appropriate by the board. The board by administrative rule may identify the requirements for issuance and renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.

20. Conduct public hearings before adopting any rules or standards.
21. Establish, implement, and maintain a registry of each person who meets the definition of assistant to the nurse.

regulate the practice of nursing to assure that qualified competent practitioners and high quality standards are available. Regulation of the profession of nursing must ensure that no person may practice or offer to practice nursing or use titles of advanced practice registered nurse, registered nurse, licensed practical nurse, nurse assistant, or titles of a similar nature which denote the practice of nursing to the general public unless licensed or registered as provided in this chapter. The board shall:

1. Enforce the provisions of this chapter. The board has all of the duties, powers, and authority specifically granted by and necessary for the enforcement of this chapter.
2. Adopt rules necessary to administer this chapter.
3. Appoint and employ a qualified registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
4. Establish fees and receive all moneys collected under this chapter and authorize all expenditures necessary to conduct the business of the board. Any balance of fees after payment of expenditures must be used to administer this chapter.
5. Establish qualifications for nursing licensure and registration.
6. Establish standards for nursing education and practice and:
 - a. Collaborate and consult with the appropriate nursing organizations and other affected parties in the establishment of the standards; and
 - b. Consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.
7. Periodically review and approve nursing education programs.
8. License and register applicants and renew and reinstate licenses and registrations.
9. Establish standards for assessing the competence of licensees and registrants continuing in or returning to practice.

10. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
11. Issue limited licenses to individuals requiring accommodation to practice nursing.
12. Establish programs for the rehabilitation of nurses with workplace impairments.
13. Discipline licensees and registrants for violating this chapter.
14. Establish a nursing student loan program funded by license fees to encourage persons to enter and advance in the nursing profession.
15. Establish a registry of persons licensed or registered by the board.
16. Collaborate and consult with the North Dakota nurses association, North Dakota licensed practical nurses association, and other nursing specialty groups prior to the adoption of rules.
17. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
18. Conduct and support projects pertaining to nursing education and practice.
19. Notify the board of pharmacy on an annual basis, or more frequent basis if necessary, of advanced practice registered nurses authorized to write prescriptions.
20. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 9. AMENDMENT. Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. Removal from board Licensure - Registration. The governor may remove any member of the board of nursing for cause upon recommendation of two-thirds of the members of the board. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:

1. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit an official transcript showing completion of a board approved nursing education program preparing for the level of licensure sought; and
 - c. Pass an examination approved by the board.
2. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:

- a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit an official transcript showing completion of a nursing education program equal to or exceeding the requirements for nursing education programs in place in this state at the time the applicant qualified for initial licensure;
 - c. Submit proof of initial licensure by examination with the examination meeting the state requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; and
 - d. Submit evidence of current unencumbered licensure in another state or territory or meet continued competency requirements as established by the board.
3. If an applicant for licensure by endorsement does not meet the educational requirements for the appropriate level of licensure as established by the board, a transitional license may be issued. A transitional license may be issued and renewed according to board rules. Renewal requires proof of progression towards meeting the educational requirements.
4. An applicant for licensure as an advanced practice registered nurse shall:
- a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board; and
 - c. Possess or show evidence of application for a current unencumbered registered nurse license.
5. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state prior to the effective date of this Act may apply for and receive an advanced practice license if that person meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.
6. An applicant for nurse assistant registration shall:
- a. Submit a completed application and the appropriate fee as established by the board; and
 - b. Provide verification of appropriate training and evaluation in the performance of basic nursing tasks.

SECTION 10. AMENDMENT. Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-10. License by examination - Registration - Renewal. The board may issue a license to practice as a registered nurse or a licensed practical nurse to an applicant for license by examination if the applicant:

- 1- Shows evidence of satisfactory completion of the appropriate nursing education program approved by the board or completion of a nursing education program located in another country or approved by another board of nursing which meets or exceeds the standards for registered or practical nursing programs in North Dakota;
- 2- Has submitted a completed application and fee for licensure by examination and has written and passed the licensing examination given by the board;
- 3- Is a resident of North Dakota; or has accepted employment in North Dakota or with a federal agency.

Authorization to practice nursing between the dates of graduation and notification of the results of the first licensing examination for which the candidate is eligible may be issued by the board to a candidate who meets requirements set by the board:

1. A current license to practice as an advanced practice registered nurse, registered nurse, or licensed practical nurse must be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or by a federal agency. If a person does not renew a license before its expiration date, the license may be reinstated if that person meets the requirements set by the board.
2. A nurse assistant may renew registration upon submission of a renewal application and documentation of competency by the employer. A lapsed nurse assistant registration may be renewed upon submission of the application, payment of the fee, and documentation of competency.

SECTION 11. AMENDMENT. Section 43-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. License - When issued Duties of licensees. A current license to practice will be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or a federal agency. Each person licensed by the board shall provide information requested by the board at the time of renewal. Each person licensed by the board shall report to the board any knowledge of the performance by others of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each licensed nurse shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee is a party. Any person, other than a licensee alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

SECTION 12. AMENDMENT. Section 43-12.1-12 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-12. License by endorsement Emergency treatment by nurses. The board may issue a license to practice as a registered nurse or licensed practical nurse to an applicant from another state by endorsement if the applicant:

1. Has satisfactorily completed the appropriate nursing education program in another country or the appropriate nursing education program approved by a board of nursing in the United States. For purposes of this subsection, "appropriate nursing education program" means one that meets or exceeds standards for registered or practical nursing programs in North Dakota at the time the applicant qualified for initial licensure outside of North Dakota.
2. Has been duly licensed in another state or country on the basis of passing a licensing examination acceptable to the board.
3. Is a resident of North Dakota or has accepted employment in North Dakota.

Upon receipt of the completed application for license by endorsement, payment of fee as set by the board, and evidence that an applicant will meet all the requirements for licensure in North Dakota, the board may issue a temporary permit to practice as a registered nurse or licensed practical nurse in this state until the license is issued. Such temporary permit expires at the end of ninety days and may be renewed only for reasons satisfactory to the board. A nurse licensed under this chapter, who, in good faith, provides nursing care at the scene of an emergency, may provide only that nursing care as in the nurse's judgment is at the time indicated. In the event of a disaster, a licensed nurse may initiate any therapeutic measure that is indicated according to that nurse's judgment.

SECTION 13. AMENDMENT. Section 43-12.1-13 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-13. Renewal of license Disciplinary proceedings. The board shall renew nursing licenses periodically and may adopt rules under chapter 28-32, after consultation with duly organized professional nursing organizations recognized by the state board of nursing and with employers of nurses; to determine eligibility for renewal of license before reissuing such licenses. Upon meeting board requirements for renewal of license and paying the renewal fee as set by the board, a current license will be issued. If a registered nurse or a licensed practical nurse fails to renew a license by January first of the appointed year, the license may be reinstated if the licensee meets the requirements set by the board. Disciplinary proceedings under this chapter must be conducted in accordance with chapter 28-32. Fees of up to one thousand dollars or the assessment of costs and disbursements, or both, may be imposed against a respondent in addition to any licensure or registration sanctions the board may impose. An appeal from the final decision of the board may be taken to the district court of Burleigh County under chapter 28-32. The board shall furnish to the boards of nursing of other states and to health care agencies of this state, a list of the names and addresses of licensees or registrants who have been disciplined by the board.

SECTION 14. AMENDMENT. Section 43-12.1-14 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties. The board shall have the power to discipline licensees as necessary by reprimanding the licensee, placing the

licensee on probationary status; denying; suspending; or revoking a license or permit to practice nursing issued in accordance with this chapter if the person is found:

1. To be guilty of fraud or deceit in procuring or attempting to procure a license or permit to practice nursing;
2. To have had a license to practice nursing suspended or revoked in another jurisdiction which has not been reinstated;
3. To have been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a nurse; or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1;
4. To be guilty of unprofessional conduct likely to deceive, defraud, or harm the public;
5. To be practicing nursing incompetently by reason of negligent acts;
6. To be mentally or physically unsafe for nursing practice;
7. To be practicing as a registered nurse or a licensed practical nurse unless currently licensed to do so.

Any person may file a written sworn complaint with the executive director of the board charging a licensee with having committed any of the actions specified as grounds for discipline. All written complaints filed with the board will be investigated according to board rules. If the investigation reveals grounds to support the charges made against the licensee, the executive director of the board will initiate the hearing procedure in accordance with chapter 28-32. The board shall fix a time and place for a hearing. If the licensee is found to have committed any of the charges in the complaint, the board may reprimand the licensee; place the licensee on probationary status subject to reasonable terms of probation; deny, suspend, or revoke a license. In addition, if the respondent is found by the board to have committed any of the acts set out in this section for which discipline may be imposed, the board may tax costs and disbursements against the respondent as in civil actions, and may further impose a penalty fee if the respondent is found by the board to have committed any of the acts set out in subsections 1 through 4 of section 43-12.1-15 or subsection 7 of this section. Any fee, costs, and disbursements imposed by the board against the respondent may be paid within a reasonable time and through reasonable periodic payments as specified in the board's order. Any penalty fee imposed may not exceed five dollars for each day or fraction of a day in which the respondent is found by the board to have committed any of the prohibited acts as set out herein, and may not exceed a total of one thousand dollars. A suspended license may be reinstated at any time by the board. A revoked license may be reissued after one year at the board's discretion. An appeal from the final decision of the board may be taken to the district court of Burleigh County in accordance with the provisions of chapter 28-32. The board shall furnish to the boards of nursing of other states, and to health agencies of this state, a list of the names and addresses of licensees who have been disciplined by the board. may suspend, revoke, place on probation, refuse to issue or renew a license, or reprimand a licensee or registrant if the licensee or registrant:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates

adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;

2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license to practice nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise restricted;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. Is unfit or incompetent to practice nursing by reason of negligence, patterns of behavior, or other causes as established under rules adopted by the board;
6. Has diverted or attempted to divert drugs or controlled substances for unauthorized use;
7. Has practiced nursing in this state without a current license or as otherwise prohibited by this chapter;
8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to meet the duties of a licensee or registrant under this chapter.

SECTION 15. AMENDMENT. Section 43-12.1-15 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-15. Violation - Penalties. ~~No A person or persons~~ may not:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record which might enable a person to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse ~~as defined in this chapter under cover or through use of~~ a transcript from a school of nursing, diploma, certificate of registration, license, or record which was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse as defined by this chapter unless ~~duly~~ licensed to do so.
5. Conduct a nursing any education program for the preparation of registered nurses or licensed practical nurses preparing a person for

nursing licensure or registration unless the program has been approved or accepted by the board.

6. Employ a person to practice nursing or perform nursing or nursing-related functions or tasks unless the person is authorized licensed or registered by the board to perform these functions or tasks.

Any violation of this ~~section~~ chapter is a class B misdemeanor.

SECTION 16. AMENDMENT. Section 43-17-02 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02. Persons exempt from the provisions of chapter. The provisions of this chapter do not apply to the following:

1. Students of medicine or osteopathy who are continuing their training and performing the duties of a resident in any hospital or institution maintained and operated by the state, an agency of the federal government, or in any residency program accredited by the accreditation council on graduate medical education.
2. Any physician residing on the border of a neighboring state and duly licensed under the laws thereof, who does not open an office or appoint a place to meet patients or to receive calls within this state.
3. The domestic administration of family remedies.
4. Dentists practicing their profession when properly licensed.
5. Optometrists practicing their profession when properly licensed.
6. The practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, if the person administering, making use of, assisting in, or prescribing, such religious worship, devotion, or healing does not prescribe or administer drugs or medicines and does not perform surgical or physical operations, and if he does not hold himself out to be a physician or surgeon.
7. Commissioned medical officers of the armed forces of the United States, the United States public health service, and medical officers of the veterans administration of the United States, in the discharge of their official duties, and licensed physicians from other states or territories if called in consultation with a person licensed to practice medicine in this state.
8. Doctors of chiropractic duly licensed to practice in this state pursuant to the statutes regulating such profession.
9. Podiatrists practicing their profession when properly licensed.
10. Any person rendering services as a physician's trained assistant, if such service is rendered under the supervision, control, and responsibility of a licensed physician and provided that the state board of medical examiners shall prescribe rules and regulations governing the conduct, activities, and supervision of physicians' trained assistants. Physicians'

trained assistants may not be authorized to perform any services which must be performed by persons licensed pursuant to chapters ~~43-12~~ 43-12.1, 43-13, 43-15, and 43-28 or services otherwise regulated by licensing laws, notwithstanding the fact that medical doctors need not be licensed specifically to perform the services contemplated under such chapters or licensing laws.

11. A nurse practicing the nurse's profession when properly licensed by the North Dakota board of nursing.

SECTION 17. REPEAL. Sections 43-12-26.1, 43-12-27, 43-12.1-08.1, 43-12.1-13.1, 43-12.1-13.2, and 43-12.1-14.1 of the North Dakota Century Code are repealed.

SECTION 18. TRANSITION. Rights and duties that have matured, penalties that were incurred, and proceedings that were commenced before the effective date of this Act remain valid under the law in effect at the time of the occurrence. Any person holding a license or registration to practice nursing that is valid on the effective date of this Act is deemed to be licensed or registered under the provisions of this Act and is eligible for renewal of the license or registration under the conditions and standards prescribed in this Act. Any person holding a lapsed license or registration on the effective date of this Act may become licensed or registered by applying for reinstatement according to the standards prescribed in this Act.

SECTION 19. JOINT RULEMAKING COMMITTEE. A joint rulemaking committee consisting of three members of the board of nursing and three members of the board of medical examiners shall develop rules governing the prescriptive practice described in subdivision b of subsection 6 of section 43-12.1-08. The board of nursing shall implement the rules.

SECTION 20. EXPIRATION DATE. Subsection 9 of section 5 and section 19 of this Act are effective through July 31, 1997, and after that date are ineffective.

Approved April 6, 1995
Filed April 6, 1995

CHAPTER 404

SENATE BILL NO. 2239 (Senators Traynor, DeMers, Krebsbach) (Representatives Kunkel, Rydell)

NURSE PRACTICES ACT EXEMPTIONS

AN ACT to amend and reenact section 43-12.1-04 of the North Dakota Century Code, relating to persons exempt from the provisions of the Nurse Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁰ SECTION 1. AMENDMENT. Section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who ~~give nursing assistance~~ perform nursing tasks in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state ~~who are~~ employed in this state by the United States government or a ~~bureau, division, or agency thereof~~ any of its bureaus, divisions, or agencies.
4. ~~Legally licensed nurses of~~ A nurse licensed by another state or Canada, whose employment requires ~~them~~ the nurse to accompany and care for a patient who is in transit for ~~medical treatment~~ health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who ~~provides nursing care or performs nursing functions or nursing tasks for an immediate~~ a family member.
- 6- 7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.

²⁰⁰ Section 43-12.1-04 was also amended by section 5 of Senate Bill No. 2192, chapter 403.

9. A person who is not licensed under this chapter and who provides medication administration according to individual needs and as part of an individual habilitation or case plan:
- a. Within a developmental disabilities provider agency licensed pursuant to chapter 25-16;
 - b. Within a foster care provider agency licensed pursuant to chapter 50-11; or
 - c. Through, or under contract with, a human service center licensed pursuant to chapter 50-06.

A licensed nurse may delegate medication administration to a person exempt under this section.

Approved April 5, 1995
Filed April 6, 1995

CHAPTER 405**SENATE BILL NO. 2163**

(Industry, Business and Labor Committee)
(At the request of the Board of Pharmacy)

PHARMACY TECHNICIANS

AN ACT to create and enact a new subsection to section 43-15-01 and a new subsection to section 43-15-10 of the North Dakota Century Code, relating to definitions applicable to pharmacists and the powers of the board of pharmacy; and to amend and reenact section 43-15-14 of the North Dakota Century Code, relating to the unlawful practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰¹ **SECTION 1.** A new subsection to section 43-15-01 of the North Dakota Century Code is created and enacted as follows:

"Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted by the board.

²⁰² **SECTION 2.** A new subsection to section 43-15-10 of the North Dakota Century Code is created and enacted as follows:

To adopt, amend, and repeal rules as may be deemed necessary by the board to register pharmacy technicians pursuant to qualifications established by the board, to charge a pharmacy technician an annual registration fee not to exceed fifty dollars, to specify tasks associated with and included in the practice of pharmacy which may be delegated by a licensed pharmacist to a registered pharmacy technician, to provide for suspension or revocation of a pharmacy technician's registration, and to regulate and control pharmacy technicians. The board may, in its discretion, allocate up to fifty percent of the amount of the registration fee to an appropriate pharmacy technician association for its general operating expenses, including pharmacy technician education and development standards.

SECTION 3. AMENDMENT. Section 43-15-14 of the North Dakota Century Code is amended and reenacted as follows:

43-15-14. Unlawful practice of pharmacy.

²⁰¹ Section 43-15-01 was also amended by section 1 of Senate Bill No. 2212, chapter 406.

²⁰² Section 43-15-10 was also amended by section 4 of House Bill No. 1403, chapter 217, and section 2 of House Bill No. 1058, chapter 243.

1. Applicability. No person may engage in the practice of pharmacy unless licensed to practice pharmacy under this chapter, except that a registered pharmacy technician may perform specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted under rules adopted by the board. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.
2. Penalties. Any person who is found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed one thousand dollars for each offense. Each violation of this chapter or the rules adopted under this chapter pertaining to unlawfully engaging in the practice of pharmacy also constitutes a class B misdemeanor.
3. A pharmacy or licensed pharmacist that utilizes the services of a registered pharmacy technician as permitted by the board, may not be considered as aiding and abetting an unauthorized person to practice pharmacy; provided, however, that the pharmacy or licensed pharmacist must retain responsibility for any act performed by a registered pharmacy technician in the course of the registered pharmacy technician's employment.

Approved March 10, 1995

Filed March 13, 1995

CHAPTER 406**SENATE BILL NO. 2212**

(Industry, Business and Labor Committee)

(At the request of the Board of Pharmacy)

PHARMACY PRACTICE DEFINITION

AN ACT to amend and reenact subsection 22 of section 43-15-01 of the North Dakota Century Code, relating to the definition of practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰³ **SECTION 1. AMENDMENT.** Subsection 22 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary to ~~provide pharmaceutical care~~ as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising, consulting, and educating where necessary or where regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; where appropriate and where regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; emergency pharmacy practice; prescriptive practices as limited herein; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

Approved April 4, 1995

Filed April 4, 1995

²⁰³ Section 43-15-01 was also amended by section 1 of Senate Bill No. 2163, chapter 405.

CHAPTER 407

SENATE BILL NO. 2213

(Industry, Business and Labor Committee)
(At the request of the State Board of Pharmacy)

PHARMACY TEACHING BY BOARD MEMBERS

AN ACT to repeal section 43-15-13 of the North Dakota Century Code, relating to the teaching of pharmacy by members of the state board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 43-15-13 of the North Dakota Century Code is repealed.

Approved March 24, 1995
Filed March 27, 1995

CHAPTER 408**SENATE BILL NO. 2438**

(Senators Thane, Krauter, Wanzek)
(Representatives Boucher, Price, Stenehjem)

PHARMACIST LIMITED PRESCRIPTIVE PRACTICES

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to limited prescriptive practices by licensed pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Limited prescriptive practices.

1. A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician, under the supervision of the same licensed physician, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a skilled nursing facility, or a swing bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist.
2. The licensed physician and the licensed pharmacist shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement at least every two years or when they modify the scope of the pharmacist's prescriptive practices. The collaborative agreement, or an amendment to the agreement, is effective when approved by the board of medical examiners and the board of pharmacy.
3. The agreement must include a provision that requires the licensed pharmacist to immediately notify the licensed physician when the licensed pharmacist initiates or modifies a drug therapy.
4. The board of medical examiners and the board of pharmacy shall jointly establish a prescriptive practices committee consisting of two physicians appointed by the board of medical examiners, one physician appointed by the North Dakota medical association, one pharmacist appointed by the board of pharmacy, and one pharmacist appointed by the North Dakota pharmaceutical association. The prescriptive practices committee shall develop and submit proposed rules concerning the implementation of this section to the board of medical examiners and the board of pharmacy. Any rules to implement this section must be jointly adopted by the board of medical examiners and the board of pharmacy.

Approved April 3, 1995
Filed April 3, 1995

CHAPTER 409

HOUSE BILL NO. 1256

(Representatives Keiser, Kelsch)

DENTAL HYGIENISTS AND DENTISTRY PRACTICE

AN ACT to amend and reenact sections 43-20-03, 43-20-07, 43-20-12, 43-20-12.1, subsection 6 of section 43-28-01, subsections 1 and 3 of section 43-28-04, section 43-28-05, subsection 5 of section 43-28-06, sections 43-28-11, 43-28-12.2, subsections 1 and 2 of section 43-28-15, sections 43-28-19, and 43-28-23 of the North Dakota Century Code, relating to dental hygienists and the practice of dentistry; to direct the board of dental examiners and the board of medical examiners to study the licensing and practice of oral and maxillofacial and related surgical procedures; to provide an effective date and an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by. As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct ~~or~~, modified general, or general supervision of a licensed dentist. General supervision may be utilized only if the following conditions are met:

1. The patient is a patient of record who has been examined by the dentist within the past twelve months;
2. The patient is being treated at the primary practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;
3. A current treatment plan is in place; and
4. Any delegated procedure is preauthorized by the supervising dentist.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

SECTION 2. AMENDMENT. Section 43-20-07 of the North Dakota Century Code is amended and reenacted as follows:

43-20-07. Licensure by credential review. Any dental hygienist who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been ~~duly~~ licensed for ~~at least three years to practice dental hygiene in another~~ and who has been actively practicing dental hygiene for at least three years

prior to the application to practice in this state, who is of good moral character and desirous of removing to this state, and who deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and a letter from the secretary of the state dental association, or the secretary of the state dental hygienists association or organization, of that state, certifying that the dental hygienist is of who provides reference letters from three dentists attesting to the dental hygienist's clinical competence, good moral character, and professional attainments attainment, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state. The board may dispense with examining an applicant if the state in which the applicant was previously licensed has a reciprocal agreement with this state.

SECTION 3. AMENDMENT. Section 43-20-12 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12. Dental hygienist - Dental assistant - Scope of permitted practice.

1. A licensed dentist may delegate to a competent dental hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.
2. ~~Except as provided in this subsection, dental hygienists may perform delegated procedures only under direct or modified general supervision of a dentist licensed in this state. The board of dental examiners may, where the board finds it appropriate, authorize the performance of delegated procedures under indirect or general supervision in hospitals, long-term care facilities, and state institutions upon application by a dentist licensed in this state. Any authority granted under this subsection is valid for one year, and upon application by a licensed dentist for renewal of the authority, must be reviewed in full by the board prior to the granting of renewal of the authority.~~
3. A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners.

SECTION 4. AMENDMENT. Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. Upon the fifth anniversary of the issuance of a license to practice dental hygiene and each five years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dental hygiene as is required by the board. The minimum

requirement may not be less than forty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed person who fails to comply with this requirement ~~must~~ may, at the discretion of the board, be reexamined to determine the person's competency to continue licensure. If, in the opinion of the board, the licensed person does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

SECTION 5. AMENDMENT. Subsection 6 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

6. For the purposes of this chapter, the term "practice of dentistry" ~~means and~~ includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, ~~the~~ surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

SECTION 6. AMENDMENT. Subsection 6 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

6. For the purposes of this chapter, the term "practice of dentistry" ~~means and~~ includes examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae and soft tissues, and the diagnosis, ~~the~~ surgical, and adjunctive treatment of the diseases, injuries, and defects of the human jaw and associated structures. However, no dentist licensed in this state may perform oral maxillofacial surgery unless the licensee also is certified or board-eligible for certification by the American board of oral and maxillofacial surgeons.

SECTION 7. AMENDMENT. Subsections 1 and 3 of section 43-28-04 of the North Dakota Century Code are amended and reenacted as follows:

1. A person may not be appointed as a dentist member of the board unless that person:
 - a. Is a ~~dentist~~ licensed and registered dentist in accordance with chapter 43-28.
 - b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.

3. A person may not be appointed as the consumer member of the board unless that person:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment.
 - b. Has no personal or family financial relationship with the dental profession.
 - c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of a person engaged in any of those occupations.

SECTION 8. AMENDMENT. Section 43-28-05 of the North Dakota Century Code is amended and reenacted as follows:

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting, at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, vice president, and a secretary-treasurer. The secretary-treasurer shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ninety dollars for each day actually engaged in the duties of the office and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The secretary-treasurer ~~must~~ may be paid an annual salary equal to fifteen percent of all funds received in an amount determined by the board ~~during the year~~. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

SECTION 9. AMENDMENT. Subsection 5 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.

SECTION 10. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

43-28-11. Examination required - Application - Qualifications - Fees. Any person who desires to obtain a license to practice dentistry in this state shall apply to the ~~secretary-treasurer~~ executive director of the board on forms prescribed by the board and shall submit to an examination by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true of applicant's own knowledge, and must be received by the ~~secretary-treasurer~~ executive director of the board at least thirty days before the date of the examination. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board. Additional costs of regional or other state's examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:

1. Is a graduate of a dental college recognized by the board.
2. Is a person of good moral character.

SECTION 11. AMENDMENT. Section 43-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists. Upon the fifth anniversary of the issuance of a license to practice dentistry and each five years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than ~~seventy~~ eighty hours during the preceding five years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

SECTION 12. AMENDMENT. Subsections 1 and 2 of section 43-28-15 of the North Dakota Century Code are amended and reenacted as follows:

1. Has been licensed and has been actively practicing dentistry for at least five years immediately preceding application to practice dentistry in another state where the requirements are at least equivalent to those of this state; ~~and where like provisions are accorded to holders of certificates of registration issued in this state.~~
2. Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character.

SECTION 13. AMENDMENT. Section 43-28-19 of the North Dakota Century Code is amended and reenacted as follows:

43-28-19. Revocation of license and certificate - Proceedings, how initiated - Service of notice and hearing. Proceedings for the suspension or revocation of a license and certificate of registration to practice dentistry in this state may be initiated:

1. Upon the complaint of any member of the board; or
2. Upon the complaint of another person.

The complaint must be in writing and verified under oath by the complainant, either upon personal knowledge or upon information and belief. Three copies thereof must be filed with the ~~secretary-treasurer~~ executive director of the board, whereupon the board, if it deems the complaint sufficient, shall issue its order setting a date and place for the hearing thereof on the merits. The ~~secretary-treasurer~~ executive

director of the board shall cause a copy of the complaint and order for hearing to be served upon the accused, either personally or by certified mail, such service must be made at least twenty days before the day set forth for hearing thereon.

SECTION 14. AMENDMENT. Section 43-28-23 of the North Dakota Century Code is amended and reenacted as follows:

43-28-23. Notice to board of change of address. Within thirty days after a licensed and registered dentist changes the dentist's place of business, the dentist shall notify the ~~secretary-treasurer~~ executive director of the board of the new address. The notice must be given by certified mail and return receipt requested. Such licensed and registered dentist may not practice dentistry in the state for more than thirty days after such removal without giving such notice.

SECTION 15. STUDY OF LICENSING ORAL AND MAXILLOFACIAL PROCEDURES. During the 1995-96 legislative interim, the board of dental examiners and the board of medical examiners shall study the licensing and practice of oral and maxillofacial and related surgical procedures and present any recommendations to the fifty-fifth legislative assembly.

SECTION 16. EFFECTIVE DATE - EXPIRATION DATE. Section 6 of this Act expires on July 31, 1997. Section 5 of this Act becomes effective on August 1, 1997.

SECTION 17. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 1995
Filed April 21, 1995

CHAPTER 410**HOUSE BILL NO. 1172**

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Commission)

**REAL ESTATE COMMISSION JURISDICTION OVER
MORTGAGE BROKERS ELIMINATED**

AN ACT to amend and reenact sections 13-04.1-02, 43-23-05, 43-23-06.1, 43-23-07, subsection 1 of section 43-23-08, sections 43-23-09, 43-23-10, 43-23-12, 43-23-13, and 43-23-13.1 of the North Dakota Century Code, relating to the definition of money broker and mortgage broker exceptions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02. Money broker license required. Except as otherwise herein provided, no person other than a money broker licensed and authorized under this chapter may advertise or solicit either in print, by letter, in person, or otherwise in North Dakota, the right to find lenders or provide loans for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson.

SECTION 2. AMENDMENT. Section 43-23-05 of the North Dakota Century Code is amended and reenacted as follows:

43-23-05. Real estate license required. No person may act as a real estate broker; ~~or~~ real estate salesperson, ~~or mortgage broker~~ or advertise or assume to act as such real estate broker; ~~or~~ real estate salesperson, ~~or mortgage broker~~ without a license issued by the real estate commission. No person is entitled to collect any fees, compensation, or commission as a real estate broker; ~~or~~ real estate salesperson; ~~or mortgage broker~~ without having first complied with the provisions of this chapter. No copartnership, association, corporation, or limited liability company may be granted a license, unless at least one partner, shareholder, member, manager, or officer of the copartnership, association, corporation, or limited liability company, actually engaged as a real estate broker; ~~or~~ real estate salesperson; ~~or mortgage broker~~ as defined herein, holds a license as a real estate broker, and unless every employee who acts as a real estate salesperson ~~or mortgage broker~~ for such copartnership, association, corporation, or limited liability company holds a license as a real estate salesperson ~~or mortgage broker~~.

²⁰⁴ SECTION 3. AMENDMENT. Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-06.1. Definitions. When used in this chapter, the following definitions shall have the following meanings except where the context clearly indicates that another meaning is intended:

1. "Commission" means the North Dakota real estate commission.
2. ~~"Mortgage broker" means any person, firm, partnership, trust, copartnership, association, cooperative, corporation, limited liability company, or other firm or entity, foreign or domestic, other than a licensed real estate broker, bank or trust company, savings and loan association, insurance company, federal land bank, or state or federal agency and their employees, who for a fee, commission, salary, or other consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of mortgages upon real estate for others, as a whole or partial vocation. The term "mortgages" as used in this chapter shall exclude any leasehold interests. "Mortgage broker" does not include persons loaning their own funds.~~
3. "Person" means and includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
- 4+ 3. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- 5+ 4. "Real estate broker", or "broker", means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
 - a. Lists, offers, attempts or agrees to list real estate or any interest therein, or any improvements affixed thereon for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest therein, or any improvements affixed thereon.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest therein, or any improvements affixed thereon.

²⁰⁴ Section 43-23-06.1 was also amended by section 2 of Senate Bill No. 2520, chapter 411.

- d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest therein, or any improvements affixed thereon.
 - e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein, or any improvements thereon.
 - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in his own behalf.
 - g. Advertises or holds himself out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest therein, or any improvements thereon.
 - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest therein, or any improvements thereon.
- 6+ 5. "Real estate salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection § 4 for or on behalf of such licensed real estate broker.

SECTION 4. AMENDMENT. Section 43-23-07 of the North Dakota Century Code is amended and reenacted as follows:

43-23-07. Real estate brokers, and salespersons, ~~or mortgage brokers~~ - Exceptions. The term "real estate broker"; or "real estate salesperson"; ~~or "mortgage broker"~~ does not include:

1. Any person, partnership, association, corporation, or limited liability company who is a bona fide owner or lessor or who accepts or markets leasehold interests in residential or agricultural property and performs any of the aforesaid acts with reference to property owned or leased by them, nor does it apply to regular employees thereof, where the acts are performed in the regular course of or as an incident to the management of the property and the investment therein.
2. An attorney at law, admitted to practice in this state, handling sales of real estate in the course of estate or guardianship administration in district court, or trust administration, bankruptcy proceedings, receiverships, or like actions subject to approval by a court of competent jurisdiction, or sales of real estate arising in the usual course of the practice of law.
3. Any person selling real estate as an auctioneer, provided the sale is advertised as a bona fide public auction.
4. Any bank or trust company or any of its officers or employees in the performance of their duties as an officer or employee of the bank or trust company.
5. Any person holding in good faith a duly executed power of attorney from the owner, authorizing a final consummation and execution for the

sale, purchase, lease, or exchange of real estate when such acts are not of a recurrent nature and done with the intention of evading this section.

6. Any person while acting as a receiver, trustee, administrator, executor, guardian, or under court order, or while acting under authority of a deed, trust, or will.
7. Public officers while performing their duties.

SECTION 5. AMENDMENT. Subsection 1 of section 43-23-08 of the North Dakota Century Code is amended and reenacted as follows:

1. Licenses and the renewals thereof may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of a real estate broker; ~~or a real estate salesperson; or mortgage broker~~ in such manner as to safeguard the interest of the public, and whose real estate license ~~or mortgage broker license~~ has not been revoked in this or any other state within two years prior to date of application. To determine the competency of applicants, the commission shall prescribe and hold examinations at designated times and places.

SECTION 6. AMENDMENT. Section 43-23-09 of the North Dakota Century Code is amended and reenacted as follows:

43-23-09. License application. Every application for a real estate broker's license; or a real estate salesperson's license; ~~or a mortgage broker's license~~ must be in writing upon blanks prepared by the commission and contain such data and information as the commission may require.

SECTION 7. AMENDMENT. Section 43-23-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23-10. Nonresident brokers - Reciprocity - Consent to service. A nonresident broker regularly engaged in the real estate business as a vocation; ~~or a mortgage broker regularly engaged in the mortgage business as a vocation;~~ and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, may not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker ~~or mortgage broker~~ by another state as satisfactorily qualifying him for license as a broker; provided, that the nonresident broker has qualified for license in his own state and also that the other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a claim for relief may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the secretary-treasurer, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. The consent must be duly acknowledged. Any service of process or pleading must be by duplicate copies, one of which must be filed in the office of the commission and the other immediately forwarded by registered mail to the last known main office of the applicant whom said process or pleading is directed, and no default in any such proceedings or action may be taken except upon affidavit or certificate of the commission or the secretary-treasurer, that a copy of said process or pleading was

mailed to the defendant as herein required, and no judgment by default may be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

SECTION 8. AMENDMENT. Section 43-23-12 of the North Dakota Century Code is amended and reenacted as follows:

43-23-12. Broker's place of business - License of employed salesperson.

1. Every person, partnership, association, corporation, or limited liability company licensed as a real estate broker ~~or mortgage broker~~ is required to have and maintain a definite place of business within this state, for the transaction of real estate ~~or mortgage broker~~ business. The certificate of registration as broker and the certificate of each real estate salesperson ~~or mortgage broker~~ employed by such broker must be prominently displayed in said office. The said place of business must be designated in the license, and no license issued under the authority of this chapter may authorize the licensee to transact business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before said removal or within ten days after said removal, designating the new location of such office, whereupon the commission shall forthwith issue a new license for the new location for the unexpired period. The broker's home may qualify as such place of business.
2. All licenses issued to real estate salespersons ~~or mortgage brokers~~ shall designate the employer of such salespersons ~~or brokers~~. Prompt notice in writing, within ten days, must be given to the commission by any real estate salesperson ~~or mortgage broker~~ of a change of employer, and of the name of the licensed broker into whose employ the salesperson ~~or broker~~ is about to enter, and a new license shall thereupon be issued by the commission to such salesperson ~~or broker~~ for the unexpired term of the original license, upon the return to the commission of the license previously issued. The change of employer or employment by any licensed real estate salesperson ~~or mortgage broker~~, without notice to the commission as aforesaid, shall automatically cancel that person's license. Upon termination of a real estate salesperson's ~~or broker's~~ employment, the broker employer shall forthwith return the salesperson's license ~~or mortgage broker's license~~ to the commission for cancellation. It is unlawful for any real estate salesperson ~~or mortgage broker~~ to perform any of the acts contemplated by this chapter either directly or indirectly after that person's employment has been terminated and license as a salesperson ~~or mortgage broker~~ has been returned for cancellation, until said license has been reissued by the commission.

²⁰⁵ **SECTION 9. AMENDMENT.** Section 43-23-13 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13. Fees. Fees for real estate brokers; ~~mortgage brokers~~; and real estate salespersons are as follows:

²⁰⁵ Section 43-23-13 was also amended by section 1 of House Bill No. 1085, chapter 412.

1. A fee of fifty dollars must accompany an application for an individual's real estate broker's ~~or mortgage broker's~~ license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of fifty dollars.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.
5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesperson's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee in an amount equal to the actual costs of the examination and its administration.
9. For each change of name, a fee of ten dollars.

SECTION 10. AMENDMENT. Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker, ~~or~~ real estate salesperson, ~~or mortgage broker~~ must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules ~~and regulations~~ of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, the sum of ten dollars for each month or fraction thereof after January first. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

SECTION 11. EFFECTIVE DATE. This Act becomes effective on December 1, 1995.

Approved March 31, 1995

Filed March 31, 1995

CHAPTER 411

SENATE BILL NO. 2520

(Senators Watne, Lee)

(Representatives Berg, Bernstein)

REAL ESTATE BROKERAGE FIRM AGENTS

AN ACT to create and enact a new section to chapter 3-02 and three new sections to chapter 43-23 of the North Dakota Century Code, relating to duties required of a brokerage firm, common-law agency principles, misrepresentation of a real estate transaction, and appointed agents of a brokerage firm; and to amend and reenact section 43-23-06.1 of the North Dakota Century Code, relating to definitions for purposes of the state real estate commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 3-02 of the North Dakota Century Code is created and enacted as follows:

Limitation of duties of licensed real estate agents. The duties of real estate brokers and real estate salespersons, who are licensed under chapter 43-23, and the civil liabilities arising from the duties, are limited to those duties set forth in chapter 43-23 or under rules adopted under that chapter.

²⁰⁶ SECTION 2. AMENDMENT. Section 43-23-06.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-06.1. Definitions. ~~When As~~ used in this chapter, the following definitions shall have the following meanings except where unless the context clearly indicates that another meaning is intended otherwise requires:

1. "Appointed agent" means a licensee appointed by a designated broker of the licensee's real estate brokerage firm to act solely for a client of that brokerage firm to the exclusion of other licensees of that brokerage firm.
2. "Client" means a person who has entered into a written agency agreement with a real estate brokerage firm.
3. "Commission" means the North Dakota real estate commission.
4. "Designated broker" means a licensee designated by a real estate brokerage firm to act on behalf of the brokerage firm.
5. "Dual agency" means a situation in which a real estate brokerage firm, or its licensees, owe a duty to more than one party in a real estate transaction. Dual agency is established only as follows:

²⁰⁶ Section 43-23-06.1 was also amended by section 3 of House Bill No. 1172, chapter 410.

- a. When one licensee represents both the buyer and the seller in a real estate transaction; or
- b. When two or more licensees, licensed to the same broker, each represents a party to the real estate transaction.

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

- 2- 6. "Mortgage broker" means any person, firm, partnership, trust, copartnership, association, cooperative, corporation, limited liability company, or other firm or entity, foreign or domestic, other than a licensed real estate broker, bank or trust company, savings and loan association, insurance company, federal land bank, or state or federal agency and their employees, who for a fee, commission, salary, or other consideration sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of mortgages upon real estate for others, as a whole or partial vocation. The term "mortgages" as used in this chapter ~~shall exclude~~ excludes any leasehold interests. "Mortgage broker" does not include persons loaning their own funds.
- 3- 7. "Person" ~~means and~~ includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, or other firms or entities, foreign or domestic.
- 4- 8. "Real estate", "real property", "realty", or words of like import, means any interest or estate in land, including leaseholds, whether such interest or estate is corporeal, incorporeal, freehold, or nonfreehold, and whether situated in this state or elsewhere; provided, however, that the meaning as used in this chapter does not include oil, gas, or mineral leases, nor does it include any other mineral leasehold, mineral estate, or mineral interest of any nature whatsoever.
- 5- 9. "Real estate broker", or "broker", means any person who, for another, for a fee, commission, salary, or other consideration, or with the intention or expectation of receiving or collecting such compensation from another, engages in or offers or attempts to engage in, either directly or indirectly by a continuing course of conduct or by a single act or transaction, any of the following acts:
- a. Lists, offers, attempts or agrees to list real estate or any interest therein, or any improvements affixed thereon for sale, exchange, or lease.
 - b. Sells, exchanges, purchases, or leases real estate or any interest therein, or any improvements affixed thereon.
 - c. Offers to sell, exchange, purchase, or lease real estate or any interest therein, or any improvements affixed thereon.
 - d. Negotiates, or offers, attempts, or agrees to negotiate the sale, exchange, purchase, or leasing of real estate or any interest therein, or any improvements affixed thereon.

- e. Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or any interest therein, or any improvements thereon.
 - f. Who is a licensee under this chapter and performs any of the acts set out in this subsection while acting in ~~his~~ the licensee's own behalf.
 - g. Advertises or holds ~~himself~~ oneself out as being engaged in the business of buying, selling, exchanging, or leasing of real estate or any interest therein, or any improvements thereon.
 - h. Assists or directs in the procuring of prospects, calculated to result in the sale, exchange, or leasing of real estate or any interest therein, or any improvements thereon.
10. "Real estate brokerage firm" means a person that is providing real estate brokerage services through that person's licensees and which is licensed by the commission as a real estate brokerage firm.
- 6+ 11. "Real estate salesperson" means any person who for a fee, compensation, salary, or other consideration, or in the expectation or upon the promise thereof, is employed or engaged by a licensed real estate broker to do any act or deal in any transaction as provided in subsection 5 for or on behalf of such licensed real estate broker.

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

Real estate brokerage firm - Duties required. A real estate brokerage firm and its licensees, that provide services through a written agency agreement for a client, are bound to that client by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting, subject to the provisions of this chapter and subject to any rules adopted under this chapter. The agency may be a seller agent, a buyer agent, or a subagent, or, if a different relationship between the real estate brokerage firm and the person for whom the real estate brokerage firm performs the services is intended, including a dual agent, the relationship must be disclosed.

SECTION 4. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Duties supersede common law.

1. The duties of a real estate brokerage firm, and its licensees, as specified in this chapter or in rules adopted under this chapter, supersede any fiduciary duties of that real estate brokerage firm and its licensees, to a person based on common-law principles of agency to the extent that those common-law fiduciary duties are inconsistent with the duties specified in this chapter or in rules adopted under this chapter.
2. A client is not liable for a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the misrepresentation or the licensee is repeating a misrepresentation made by the client. This

subsection is intended to supersede any common-law duty of the client that is inconsistent with this subsection.

3. A real estate brokerage firm that is providing brokerage services to a client and which, through a subagency relationship, works with another real estate brokerage firm to provide brokerage services to that client is not liable for a misrepresentation made by the other real estate brokerage firm, unless the original brokerage firm knew or should have known of the other brokerage firm's misrepresentation or the other brokerage firm is repeating a misrepresentation made by the original brokerage firm.
4. This section does not limit the liability of a licensee under section 43-23-11.1 or of a client for substantial and willful misrepresentations made in reference to a real estate transaction.

SECTION 5. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Brokerage firm may appoint agents.

1. A real estate brokerage firm, through a designated broker, may appoint in writing to a client the licensee or licensees within the brokerage firm who will act as appointed agent of that client to the exclusion of all other licensees within the brokerage firm.
2. If a real estate brokerage firm appoints an appointed agent for clients of the agency who are, or may be, parties in the same real estate transaction, the brokerage firm and its licensees are not dual agents as to those clients, and there is no imputation of knowledge or information among or between said clients, the real estate brokerage firm, and the appointed agents.
3. Nothing in this section prevents a real estate brokerage firm from entering a dual agency relationship with its clients after complying with any disclosure requirements provided by this chapter or by rules adopted under this chapter.

Approved April 12, 1995
Filed April 13, 1995

CHAPTER 412**HOUSE BILL NO. 1085**

(Finance and Taxation Committee)

(At the request of the North Dakota Real Estate Commission)

REAL ESTATE PROFESSIONAL LICENSE FEES

AN ACT to amend and reenact subsections 1, 2, and 3 of section 43-23-13 of the North Dakota Century Code, relating to real estate broker, mortgage broker, and real estate salesperson license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁷ SECTION 1. AMENDMENT. Subsections 1, 2, and 3 of section 43-23-13 of the North Dakota Century Code are amended and reenacted as follows:

1. A fee of ~~fifty~~ sixty dollars must accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~fifty~~ sixty dollars.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of ~~forty~~ fifty dollars.

Approved March 1, 1995

Filed March 1, 1995

²⁰⁷ Section 43-23-13 was also amended by section 9 of House Bill No. 1172, chapter 410.

CHAPTER 413

HOUSE BILL NO. 1084

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Commission)

REAL ESTATE COMMISSION INJUNCTIONS

AN ACT to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to injunctive actions by the North Dakota real estate commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-23 of the North Dakota Century Code is created and enacted as follows:

Injunctions authorized to enforce law. If any person or entity has engaged in any act or practice that constitutes or will constitute a violation of this chapter, the commission may commence an action in the district court of the county in which the person or entity resides or in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter or rules adopted by the commission. The commission is not required to give any bond for commencing this action. Upon a showing that the person or entity has engaged in any act or practice in violation of this chapter or rules adopted by the commission, the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

Approved March 15, 1995

Filed March 15, 1995

CHAPTER 414**HOUSE BILL NO. 1326**
(Representatives Payne, Christopherson)
(Senator Grindberg)**DENTIST OFFICE OWNERSHIP**

AN ACT to create and enact a new subsection to section 43-28-25 of the North Dakota Century Code, relating to the practice of dentistry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-28-25 of the North Dakota Century Code is created and enacted as follows:

For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business where dental operations, dental oral surgery, or dental services are performed. This provision does not apply to medical clinics and public health settings where dentists are associated and the heir of a deceased dentist who may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of death.

Approved April 5, 1995
Filed April 5, 1995

CHAPTER 415

SENATE BILL NO. 2270

(Senators Freborg, C. Nelson, Sand)

(Representatives Boehm, Dalrymple)

VETERINARY TECHNICIANS

AN ACT to create and enact five new sections to chapter 43-29 of the North Dakota Century Code, relating to licensure of veterinary technicians, veterinary technician services, and automatic licensure for certified veterinary technicians; and to amend and reenact section 43-29-09 and subsection 8 of section 43-29-13 of the North Dakota Century Code, relating to the adoption of rules by the board of veterinary medical examiners and persons not considered to be engaging in the practice of veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

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

1. "Animal" means any animal other than a human being. The term includes a mammal, bird, fish, and reptile.
2. "Board" means the board of veterinary medical examiners.
3. "Licensed veterinarian" means a person who is licensed by the board to practice veterinary medicine.
4. "Licensed veterinary technician" means a person who has graduated from a veterinary technology program that is accredited according to the standards adopted by the American veterinary medical association's committee on veterinary technician education and activities, or an equivalent program as determined by the board, and who has passed an examination prescribed by the board.

SECTION 2. AMENDMENT. Section 43-29-09 of the North Dakota Century Code is amended and reenacted as follows:

43-29-09. Permit to practice issued by executive secretary of board - Limited specialty license - Graduate veterinary technicians. Any person who desires to practice veterinary medicine, surgery, or dentistry may apply to the executive secretary of the ~~state board of veterinary medical examiners~~ for a temporary permit to practice if the applicant possesses a degree or diploma showing the applicant to be a graduate of the veterinary course offered in a veterinary school, college, or university recognized by the board. Upon the payment of fifty dollars by the applicant, twenty-five dollars must be applied toward the examination fee; ~~but must be declared forfeit and is forfeited~~ if the applicant fails to appear at the next scheduled examination. No temporary permit may be issued to any applicant who has previously failed the examination. The executive secretary, if satisfied that the applicant is a qualified and a suitable person, and with the approval of the president of the board, shall issue a permit to practice until the next examination is offered by

the board. ~~Such~~ The permit has the same force as a certificate from the board, but expires upon the adjournment of the next meeting thereof of the board at which an examination is held.

Senior A senior veterinary students student who practice practices in the office of, and under the direct supervision of, a licensed veterinarian must obtain a temporary permit to practice veterinary medicine in this state. This A temporary student permit may not exceed four months from its date of issuance and will be is granted without payment of a fee.

The board may issue a limited specialty license for the practice of that specialty in this state to a veterinarian, licensed in another state, who has passed a nationally recognized specialty board exam and who otherwise meets the qualifications to practice in this state. All limited specialty licenses regardless of when issued, expire on June thirtieth of each year and may be renewed in the discretion of the board. All veterinarians holding a limited specialty license are subject to ~~the provisions of~~ this chapter during the term of the license. Fees for a limited specialty license are the same as ~~provided~~ for a regular license.

The board shall adopt rules for the training, certification, and limits of activity for veterinary assistants and shall adopt rules for the licensing, training, certification, and limits of activity for veterinary technicians being trained and employed under the direct supervision and responsibility of a licensed veterinarian. All veterinary technicians must be registered with and subject to requirements established by the board. ~~As used in this chapter, a veterinary technician is a paramedical person who has had further training of at least two years of preparation for veterinarian related employment in a position between the professional doctor and the animal attendant levels. A veterinary technician must be trained and knowledgeable in the care and handling of animals, the basic principles of normal and abnormal life processes, and the routine laboratory and clinical procedures. Primarily, the work of a veterinary technician must be to assist veterinarians, biological researchers, and other veterinary scientists.~~

SECTION 3. AMENDMENT. Subsection 8 of section 43-29-13 of the North Dakota Century Code is amended and reenacted as follows:

8. Those who render auxiliary or supporting assistance under the responsible supervision of a North Dakota licensed veterinarian, such as veterinary aids, nurses, laboratory technicians, ~~veterinary technicians,~~ interns, or other employees of such licensed practitioners.

SECTION 4. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technicians - Examinations.

1. An applicant for licensure as a veterinary technician must have an examination date offered at least annually at a time, place, and date determined by the board at least ninety days before the scheduled examination.
2. An applicant for licensure as a veterinary technician must pass the veterinary technician national examination with a score of at least seventy percent.

3. An applicant for licensure as a veterinary technician who has successfully passed the veterinary technician national examination shall request that the applicant's examination scores be forwarded to the board by the professional examination service. An applicant is eligible for licensure upon meeting the licensure requirements set by the board.

SECTION 5. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technician services - Emergency services - Prohibited services.

1. A veterinary technician may perform the following services under the direction, supervision, and control of a licensed veterinarian, provided the licensed veterinarian performs a daily physical examination of the animal being treated:
 - a. Venipuncture, including insertion of an indwelling catheter when required.
 - b. Catheterizing the urinary bladder.
 - c. Injection, including hypodermic injection and parenteral fluids, except when in conflict with a government regulation.
 - d. Immunization immediately after examination by a licensed veterinarian, except when in conflict with a government regulation.
 - e. Inducing, maintaining, and monitoring anesthesia under the direct supervision of the licensed veterinarian.
 - f. Exposing and developing radiographic film.
 - g. Collecting and administering whole blood or plasma to an animal.
 - h. Assisting in surgery as directed by the licensed veterinarian.
 - i. Taking electrocardiogram and electroencephalogram tracings.
 - i. Performing routine laboratory procedures, including hematology, serology, microbiology, cytology, chemistry, urinalysis, fecal analysis, and skin scrapings.
 - k. Administering colonic irrigations and wound dressings.
 - l. Operating ultrasonic and polishing instruments for dental prophylaxis.
 - m. Preparing animals for surgery, including clipping, scrubbing, and disinfecting an operative site.
 - n. Preparing medicants for dispensing to clients on the direct or written order of the licensed veterinarian.
 - o. Maintaining surgery, x-ray, and laboratory logs and pharmacy records.

2. Under emergency conditions, a veterinary technician may perform the following treatments:
 - a. Applying tourniquets and pressure bandages to control hemorrhage.
 - b. Administering pharmacological agents and parenteral fluids only after direct communication with a licensed veterinarian, if the veterinarian is present or enroute to the location of the distressed animal.
 - c. Performing resuscitative oxygen procedures.
 - d. Applying temporary splints or bandages to prevent further injury to bones or soft tissues.
 - e. Applying appropriate wound dressings and external supportive treatment in severe burn cases.
 - f. Providing external supportive treatment in heat prostration cases.
3. A veterinary technician may not perform the following services unless the veterinary technician is acting as a surgical assistant to a licensed veterinarian under this chapter:
 - a. Making a diagnosis.
 - b. Prescribing a treatment.
 - c. Performing surgery.

SECTION 6. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary technician - Renewal of license.

1. A license issued to a veterinary technician under this chapter expires on December thirty-first.
2. A veterinary technician shall submit renewal fees and current mailing address before December thirty-first on an application form provided and mailed to the licenseholder by the board.
3. A veterinary technician shall submit evidence of completion of required continuing education credits in the veterinary field during the calendar year in order to apply for a license renewal.
4. Failure to submit the appropriate license renewal fee every year results in forfeiture of all rights and privileges under this chapter and the veterinary technician may not perform veterinary technician services unless the veterinary technician pays a delinquency fee in addition to the license renewal fee.

SECTION 7. A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Certified veterinary technicians - Automatic licensure. The board shall issue a veterinary technician license to a veterinary technician who is certified in this state on the effective date of this Act.

Approved April 4, 1995

Filed April 4, 1995

CHAPTER 416

SENATE BILL NO. 2533

(Senators Kringstad, Yockim)

(Representative Stenehjem)

HEARING AID DEALERS

AN ACT to amend and reenact section 43-33-04 and subsection 2 of section 43-33-15 of the North Dakota Century Code, relating to exceptions to the licensure requirement for hearing aid dealers and composition of the board of hearing instrument dispensers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-33-04 of the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter does not prevent any or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing instrument dispenser by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a licensed dispenser, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

SECTION 2. AMENDMENT. Subsection 2 of section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Members of the board must be residents of the state. The board consists of four hearing instrument dispensers who are not audiologists or otolaryngologists, one otolaryngologist, ~~two~~ three audiologists, and ~~one consumer~~ two consumers. Each hearing instrument dispenser on the board must be primarily engaged as a hearing instrument dispenser, must have at least five years of experience in this state, and must hold a valid license as a hearing instrument dispenser.

Approved March 28, 1995

Filed March 29, 1995

CHAPTER 417

HOUSE BILL NO. 1137

(Finance and Taxation Committee)

(At the request of the State Board of Examiners for Nursing Home Administrators)

NURSING HOME ADMINISTRATOR LICENSE FEES

AN ACT to amend and reenact section 43-34-05 of the North Dakota Century Code, relating to license fees for nursing home administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-34-05 of the North Dakota Century Code is amended and reenacted as follows:

43-34-05. License fees. Each person licensed as a nursing home administrator is required to pay a license fee in an amount to be fixed by the board, which fee may not exceed one hundred fifty dollars per annum. ~~The license expires on the thirty-first day of December in the year of its issuance, and is renewable annually, on a calendar year basis, upon payment of the license fee.~~ Any licensee, or applicant for license, may take a special examination for the purpose of being eligible for reciprocity with other states, upon the payment of an additional fee to be established by the board for that purpose.

Approved March 6, 1995

Filed March 7, 1995

CHAPTER 418**SENATE BILL NO. 2291**

(Senators Yockim, Nalewaja, Thane)

(Representatives Gunter, Poolman)

SOCIAL WORK LICENSING EXAMINATION

AN ACT to amend and reenact section 43-41-05 of the North Dakota Century Code, relating to requirements necessary to practice social work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work. No person may engage in the private practice of social work unless that person:

1. Is licensed under this chapter as a licensed certified social worker.
2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.
3. Has passed the clinical examination or its equivalent offered by the board.
4. Is registered with the board as eligible for private practice under criteria as may be established by board rule.

Approved March 13, 1995

Filed March 13, 1995

CHAPTER 419**HOUSE BILL NO. 1484**

(Representatives Kerzman, Austin, Gorman)
(Senators Mushik, Nalewaja, Urlacher)

**SOCIAL WORK EXAMINERS BOARD DISCIPLINARY
ACTIONS**

AN ACT to create and enact two new subsections to section 43-41-10 of the North Dakota Century Code, relating to disciplinary actions of the North Dakota board of social work examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 43-41-10 of the North Dakota Century Code are created and enacted as follows:

In order to pursue the investigation, the board may subpoena and examine witnesses and records, including client records, and copy, photograph, or take samples. The board may require a licensed social worker to give statements under oath and to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that an evaluation be secured. A written request from the board constitutes authorization to release information. All client records released to the board are confidential and not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Unless there is a client release on file allowing the release of information at the public hearing, all data and information, including client and juvenile records, acquired by the board in its investigation are confidential and closed to the public. All board meetings where client and juvenile testimony or records are taken or revised are confidential and closed to the public. If no client or juvenile testimony or records are taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

Approved March 21, 1995
Filed March 23, 1995

CHAPTER 420**HOUSE BILL NO. 1183**

(Representatives Rydell, Poolman, Carlson)
(Senators W. Stenehjem, Nalewaja, Heinrich)

RESPIRATORY CARE PRACTITIONER LICENSURE

AN ACT to amend and reenact sections 43-42-01, 43-42-02, 43-42-03, and subsection 2 of section 43-42-05 of the North Dakota Century Code, relating to respiratory care practitioners and licensure requirements of temporary respiratory care practitioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-42-01 of the North Dakota Century Code is amended and reenacted as follows:

43-42-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota state board of respiratory care examining board.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the American medical association's committee on accreditation of allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education educational programs, or the committee's successor organization.
3. "Certification examination" means the examination for respiratory therapy technicians administered by the national board for respiratory care.
4. "Certified respiratory care practitioner" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory care practitioner.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Registered respiratory care practitioner" means a person licensed by the board to practice respiratory care.
7. "Registry examination" means the examination for respiratory therapists administered by the national board for respiratory care.
8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses,

environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control, postural drainage, chest percussion and vibration and breathing exercises, respiratory rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and mechanical airways, and insertion and maintenance of artificial airways. Respiratory care The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

9. "Respiratory care assistant" means any person not licensed to practice respiratory care who assists, under the onsite direction or supervision of a registered respiratory care practitioner or a certified respiratory care practitioner, in the practice of respiratory care and who performs a limited scope of practice commensurate with the assistant's education and training.
10. "Respiratory therapy" means respiratory care.
10. "Temporary respiratory care practitioner" means any individual who is enrolled in or has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory care practitioner, or registered respiratory care practitioner.

SECTION 2. AMENDMENT. Section 43-42-02 of the North Dakota Century Code is amended and reenacted as follows:

43-42-02. North Dakota State board of respiratory care examining board.

1. ~~There is created a North Dakota~~ The state board of respiratory care examining board. ~~The board is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.~~
2. The board consists of seven members appointed by the governor. Two members must be registered respiratory care practitioners and two members must be certified respiratory care practitioners, chosen from a list of four registered respiratory care practitioners and four certified respiratory care practitioners supplied to the governor by the North Dakota ~~chapter of the Dakota~~ society for respiratory therapy care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. Members are appointed for terms of three years; ~~except of those first appointed; two must be appointed for terms of one year; two must be appointed for terms of two years; and three must be appointed for terms of three years.~~ Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.
3. The board shall annually select a chairman from among its members. ~~It must~~ The board shall meet at least twice each year and must also shall meet upon the call of the chairman.

4. The board shall consult with the North Dakota chapter of the Dakota society for respiratory therapy care before adopting any rules.

SECTION 3. AMENDMENT. Section 43-42-03 of the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory care practitioner licensing - Fees.

1. The board shall license as a registered respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a registered respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. ~~Any respiratory care practitioner who has been registered by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a registered respiratory care practitioner.~~ The board shall establish fees not in excess of fifty dollars for the issuance and renewal of licenses a registered respiratory care practitioner license.
2. The board shall license as a certified respiratory care practitioner any applicant whom the board determines to be qualified to perform the duties of a certified respiratory care practitioner. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. ~~Any respiratory care practitioner who has been certified by the national board for respiratory care prior to July 1, 1985, must, upon application, be granted a license as a certified respiratory care practitioner.~~ The board shall establish fees not in excess of thirty-five dollars for the issuance and renewal of licenses a certified respiratory care practitioner license.
3. Upon receipt of evidence showing that a person was employed in the practice of respiratory care before July 1, 1985, and that the person does not meet the criteria established in either subsection 1 or 2, the board shall license a respiratory therapist to continue to practice as a registered respiratory care practitioner, and a respiratory therapy technician to continue to practice as a certified respiratory care practitioner, for a period that expires December 31, 1988. To qualify for renewal of the license that person shall, prior to the expiration of the initial license, pass a board-prescribed examination that demonstrates to the board's satisfaction that that person is qualified to perform the duties of a registered respiratory care practitioner or certified respiratory care practitioner. The board shall license as a temporary respiratory care practitioner any applicant whom the board determines to be qualified to perform duties as a temporary respiratory care practitioner. In making this determination, the board shall require evidence that the applicant is enrolled in or has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of thirty-five dollars for the issuance and renewal of a temporary respiratory care practitioner license.
4. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:

- a. Is not qualified or competent to perform the duties of a registered respiratory care practitioner ~~or~~, a certified respiratory care practitioner, or a temporary respiratory care practitioner.
 - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - c. Has been found guilty by the board of gross negligence as a registered respiratory care practitioner ~~or~~, certified respiratory care practitioner, or a temporary respiratory care practitioner.
 - d. Has engaged in conduct as a registered respiratory care practitioner ~~or~~, certified respiratory care practitioner, or a temporary respiratory care practitioner which is unethical, unprofessional, or detrimental to the benefit of the public.
 - e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
5. ~~Except as provided in subsection 3, licenses~~ Licenses issued under this chapter expire annually ~~on January thirty-first~~, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board.
6. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 4. AMENDMENT. Subsection 2 of section 43-42-05 of the North Dakota Century Code is amended and reenacted as follows:

2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory care practitioner; provided, that the graduate holds a temporary respiratory care practitioner's license and is identified as a "graduate respiratory care practitioner applicant". ~~If an An applicant fails to pass shall take one of the next three immediately available entry level certification or registry examinations following eligibility; all privileges under this subsection cease; except, that if the applicant has enrolled in a remedial refresher respiratory care course approved by the board; then. Failure to pass any examination that is taken results in termination of the privileges provided under this subsection continue until the results of the next available certification or registry examination are made public.~~

Approved March 21, 1995

Filed March 23, 1995

CHAPTER 421**SENATE BILL NO. 2406**

(Senators DeMers, LaFountain, Nalewaja, Robinson)
(Representatives Kunkel, Thoreson)

COUNSELOR EXAMINER SPECIALTY LICENSES

AN ACT to create and enact a new section to chapter 43-47 of the North Dakota Century Code, relating to authority of the board of counselor examiners to issue specialty licenses for counselors; and to amend and reenact subsections 3 and 4 of section 43-47-01, section 43-47-04, subsections 1 and 6 of section 43-47-05, and subsections 1, 3, and 6 of section 43-47-06 of the North Dakota Century Code, relating to the counselors and licensed associate professional counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 43-47-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Counselor" means a person who has been granted either a professional counselor or associate professional counselor license by the board.
4. "Licensed associate professional counselor" means a person who has been granted an associate professional license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.

SECTION 2. AMENDMENT. Section 43-47-04 of the North Dakota Century Code is amended and reenacted as follows:

43-47-04. Representation to the public. Only persons licensed under this chapter may use the title "professional counselor" or "associate professional counselor", or the abbreviations "LPC" or "LAPC". The license issued by the board must be prominently displayed at the principal place of business of the counselor.

SECTION 3. AMENDMENT. Subsections 1 and 6 of section 43-47-05 of the North Dakota Century Code are amended and reenacted as follows:

1. This chapter does not prevent any person licensed by the state from doing work within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a professional counselor or associate professional counselor.
6. This chapter does not prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations if these persons do not hold themselves out to the public as professional counselors or associate professional counselors.

SECTION 4. AMENDMENT. Subsections 1, 3, and 6 of section 43-47-06 of the North Dakota Century Code are amended and reenacted as follows:

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate professional counselor.
3. The board shall issue a license as a licensed associate professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:
 - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
 - c. Has provided a written plan for supervised experience which meets the requirements adopted by the board.
6. An associate professional counselor initially licensed under this chapter may be licensed for no more than two years. The associate professional counselor's license may be extended beyond two years only upon recommendation of the associate professional counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate professional counselor's training program.

SECTION 5. A new section to chapter 43-47 of the North Dakota Century Code is created and enacted as follows:

Board may establish specialty licenses. The board may provide a counselor specialty license to any licensed professional counselor who meets the standards established by the board for that particular specialty. The board shall adopt standards for specialty licenses equal to or greater than those established by the national board of certified counselors, which governs the standards for particular specialties. The board may not create a specialty license for which the scope of practice is defined under any other chapter in this title.

Approved April 3, 1995
Filed April 3, 1995