

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1160
(Human Services Committee)
(At the request of the State Department of Health)

AN ACT to amend and reenact sections 23-07-02, 23-09-01, 23-09-02.1, 23-09-03, 23-09-05, 23-09-06, 23-09-07, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-21, 23-09-22, 50-10.1-01, and 50-10.2-01 of the North Dakota Century Code, relating to assisted living facilities and lodging establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

SECTION 2. AMENDMENT. Section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Assisted living facility" means a building or structure containing a series of living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16.

2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
2. ~~"Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. The term does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01.~~
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.
6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to four or more transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
10. "Proprietor" includes the person in charge of a food ~~or~~ establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.

13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

SECTION 3. AMENDMENT. Section 23-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review. Each lodging establishment and assisted living facility shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section.

SECTION 4. AMENDMENT. Section 23-09-03 of the North Dakota Century Code is amended and reenacted as follows:

23-09-03. Exiting requirements. Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

SECTION 5. AMENDMENT. Section 23-09-05 of the North Dakota Century Code is amended and reenacted as follows:

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

SECTION 6. AMENDMENT. Section 23-09-06 of the North Dakota Century Code is amended and reenacted as follows:

23-09-06. Chemical fire extinguishers - Standpipes. Each lodging establishment or assisted living facility must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

SECTION 7. AMENDMENT. Section 23-09-07 of the North Dakota Century Code is amended and reenacted as follows:

23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire. ~~After July 1, 1997, all~~ All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements.

SECTION 8. AMENDMENT. Section 23-09-09 of the North Dakota Century Code is amended and reenacted as follows:

23-09-09. Sanitation and safety. Every food ~~and establishment,~~ lodging establishment, and assisted living facility must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. Every food ~~and establishment,~~ lodging establishment, and assisted living facility must be well constructed, drained, and provided with plumbing equipment according to established sanitary principles and must be kept free from effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.
2. In municipalities in which a system of public water supply and sewerage is maintained, every food ~~and establishment,~~ lodging establishment, and assisted living facility must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes.
3. When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition.
4. All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near any food ~~or establishment,~~ lodging establishment, or assisted living facility.
5. All bedrooms must be kept free from insects and rodents, and the bedding in use must be clean and sufficient in quantity and quality.
6. Each food ~~or establishment,~~ lodging establishment, or assisted living facility shall keep in its main public washroom and available at all hours individual disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.

7. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connected directly to the outside.
8. All food ~~or~~ establishments, lodging establishments, or assisted living facilities shall equip operable windows during the summer months with screens adequate to keep out insects.
9. Neither the dining room nor kitchen of any food ~~or~~ establishment, lodging establishment, or assisted living facility may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.

SECTION 9. AMENDMENT. Section 23-09-10 of the North Dakota Century Code is amended and reenacted as follows:

23-09-10. Drinking water standards. Every person operating a food ~~or~~ establishment, lodging establishment, or assisted living facility shall see that the drinking water supplied therein is obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

SECTION 10. AMENDMENT. Section 23-09-11 of the North Dakota Century Code is amended and reenacted as follows:

23-09-11. Inspection - Reports. Every lodging establishment, food establishment, or assisted living facility must be inspected at least once every two years by the department. Food establishments and assisted living facilities must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. ~~Every food establishment must be inspected at least once every two years.~~ The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

SECTION 11. AMENDMENT. Section 23-09-14 of the North Dakota Century Code is amended and reenacted as follows:

23-09-14. Department to report to state fire marshal. The department, before the sixth day of each month, shall report to the state fire marshal on all food ~~and~~ establishments, lodging establishments, or assisted living facilities inspected by the department during the preceding month, paying particular attention in the report to the violation of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

SECTION 12. AMENDMENT. Section 23-09-16 of the North Dakota Century Code is amended and reenacted as follows:

23-09-16. License - Application. Before any food ~~or~~ establishment, lodging establishment, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food ~~and~~ establishment, lodging establishment, or assisted living facility licensed by a city or district health unit. Application for license must be made to the department during December of every year, or before the operating of the food ~~or~~ establishment, lodging establishment, or assisted living facility, as the case may be. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date.

SECTION 13. AMENDMENT. Section 23-09-17 of the North Dakota Century Code is amended and reenacted as follows:

23-09-17. License fees. The following annual license fees must be paid to the department by proprietors of food ~~and~~ establishments, lodging establishments, or assisted living facilities:

1. For a lodging establishment containing not more than three sleeping rooms, twenty dollars.
2. For a lodging establishment containing at least four but not more than ten sleeping rooms, thirty dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, forty-five dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, sixty dollars.
5. For a lodging establishment containing fifty-one sleeping rooms or more, eighty dollars.
6. For a restaurant ~~or boardinghouse~~ with a seating capacity of less than seventy-five, sixty dollars.
7. For a restaurant ~~or boardinghouse~~ with a seating capacity of seventy-five to not more than one hundred fifty, eighty dollars.
8. For a restaurant ~~or boardinghouse~~ with a seating capacity of more than one hundred fifty, eighty-five dollars.
9. For a limited restaurant, fifty dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], fifty dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], sixty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, forty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, fifty dollars.
14. For a salvaged food distributor, fifty dollars.
15. For a food processing plant, not licensed and inspected by any other federal or local health unit, twenty-five dollars.
16. For an assisted living facility, seventy-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars for an establishment with not more than five thousand square feet [464.52 square meters] and one hundred fifty dollars for an establishment over five thousand square feet [464.52 square meters]. The department shall waive all or a portion of the license fee for any food ~~or establishment~~, lodging establishment, or assisted living facility that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food ~~and establishment~~, lodging establishment, or assisted living facility beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year.

SECTION 14. AMENDMENT. Section 23-09-18 of the North Dakota Century Code is amended and reenacted as follows:

23-09-18. Failure to comply with chapter - Notice - How served. Whenever the proprietor of any food ~~or establishment~~, lodging establishment, or assisted living facility fails to comply with this chapter, the proprietor must be given notice of the time within which the proprietor must meet the

requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

SECTION 15. AMENDMENT. Section 23-09-21 of the North Dakota Century Code is amended and reenacted as follows:

23-09-21. Penalty - General. Any person operating a food ~~or establishment~~, lodging establishment, or assisted living facility in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor.

SECTION 16. AMENDMENT. Section 23-09-22 of the North Dakota Century Code is amended and reenacted as follows:

23-09-22. License canceled. Whenever the proprietor of a food ~~or establishment~~, lodging establishment, or assisted living facility has been convicted of a violation of this chapter and for a period of ten days after the conviction fails to comply with any provision of this chapter, the department may cancel the proprietor's license.

SECTION 17. AMENDMENT. Section 50-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

50-10.1-01. Definitions. As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.
3. "Long-term care facility" means any skilled nursing facility, ~~intermediate care facility~~, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

SECTION 18. AMENDMENT. Section 50-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, ~~intermediate care facility~~, basic care facility, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:

- a. Prevent the facility staff from providing customary and required care; or
 - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of workmen.
6. "Resident" means a person residing in a facility.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1160.

House Vote: Yeas 92 Nays 1 Absent 1

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State