

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 15-20.1 and a new section to
2 chapter 54-60 of the North Dakota Century Code, relating to department of career and technical
3 education innovation grants and the duties of the division of innovation and technology; to
4 amend and reenact section 9-08-06, subsection 9 of section 15-10-17, and sections 44-04-18.4,
5 54-60-02, and 57-38-30.5 of the North Dakota Century Code, relating to a department of
6 commerce division of innovation and technology, confidentiality of trade secrets, and corporate
7 income tax credits for research and experimental expenditures; to provide for an agency study
8 and report to the legislative council; to provide an appropriation; and to provide an effective
9 date.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

11 **SECTION 1. AMENDMENT.** Section 9-08-06 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **9-08-06. In restraint of business void - Exceptions.** Every contract by which anyone
14 is restrained from exercising a lawful profession, trade, or business of any kind is to that extent
15 void, except:

- 16 1. ~~One who sells the goodwill of a business may agree with the buyer to refrain from~~
17 ~~carrying on a similar business within a specified county, city, or a part of either, so~~
18 ~~long as the buyer or any person deriving title to the goodwill from the buyer carries~~
19 ~~on a like business therein.~~
- 20 2. ~~Partners, upon or in anticipation of a dissolution of the partnership, may agree that~~
21 ~~all or any number of them will not carry on a similar business within the same city~~
22 ~~where the partnership business has been transacted, or within a specified part~~
23 ~~thereof a covenant not to compete is enforceable to the extent the restraints are~~
24 limited to a reasonable period of time and a reasonable geographic area.

1 **SECTION 2. AMENDMENT.** Subsection 9 of section 15-10-17 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 9. Adopt rules promoting research, encouraging development of intellectual property
4 and other inventions and discoveries by university system employees, and
5 protecting and marketing the inventions and discoveries. The rules must govern
6 ownership or transfer of ownership rights and distribution of income that may be
7 derived from an invention or discovery resulting from research or employment in
8 the university system. The rules may provide for transfer of ownership rights or
9 distribution of income to a private, nonprofit entity created for the support of the
10 university system or one of its institutions. The rules may provide for the
11 exemption from section 44-04-18 of information contained in licensing agreements
12 between institutions and private business or industry which, if released, would
13 impair the institutions' ability to enter future licensing agreements with private
14 business or industry or harm the competitive position of the private business or
15 industry providing the information.

16 **SECTION 3.** A new section to chapter 15-20.1 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Grants for innovation.** The department shall design and implement a program to
19 provide a dollar-for-dollar match to teachers or schools for the purpose of funding innovative
20 science, technology, or innovation programs for students in kindergarten through grade twelve.
21 The department shall award the grants on a competitive basis. A grant awarded under this
22 section may not exceed seven thousand five hundred dollars. The matching funds of a grant
23 recipient may come from a public source, a private source, or any combination of public and
24 private sources. The department shall consult with the department of commerce division of
25 innovation and technology in making award determinations.

26 **SECTION 4. AMENDMENT.** Section 44-04-18.4 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **44-04-18.4. Confidentiality of trade secret, proprietary, commercial, and financial**
29 **information.**

30 1. Trade secret, proprietary, commercial, and financial information is confidential if it
31 is of a privileged nature and it has not been previously publicly disclosed.

- 1 2. Under this section, unless the context otherwise requires:
- 2 a. "Commercial information" means information pertaining to buying or selling of
- 3 goods and services which has not been previously publicly disclosed and
- 4 which if it were to be disclosed would impair the public entity's future ability to
- 5 obtain necessary information or would cause substantial competitive injury to
- 6 the person from which the information was obtained.
- 7 b. "Financial information" means information pertaining to monetary resources of
- 8 a person which has not been previously publicly disclosed and which if it were
- 9 to be disclosed would impair the public entity's future ability to obtain
- 10 necessary information or would cause substantial competitive injury to the
- 11 person from which the information was obtained.
- 12 c. "Proprietary information" includes:
- 13 (1) Information received from a sponsor of research conducted by a public
- 14 entity.
- 15 (2) Information received from a private business that has entered an
- 16 agreement with a public entity to conduct research, manufacture, or
- 17 create a product for potential commercialization.
- 18 (3) Any discovery or innovation generated by the research information,
- 19 technical information, financial information, or marketing information
- 20 acquired under activities described under paragraph 1 or 2.
- 21 (4) Any document related to the licensing or commercialization resulting
- 22 from activities described under paragraph 1 or 2.
- 23 (5) Any discovery or innovation produced by the public entity which an
- 24 employee or the entity intends to commercialize.
- 25 (6) A computer software program and components of a computer software
- 26 program which are subject to a copyright or a patent and any formula,
- 27 pattern, compilation, program, device, method, technique, or process
- 28 supplied to any public entity which is the subject of efforts by the
- 29 supplying person to maintain its secrecy and that may derive
- 30 independent economic value, actual or potential, from not being
- 31 generally known to, and not being readily ascertainable by proper

1 means by, other persons that might obtain economic value from its
2 disclosure or use.

3 (7) A discovery or innovation that is subject to a patent or a copyright and
4 any formula, pattern, compilation, program, device, combination of
5 devices, method, technique, or process that is for use, or is used, in the
6 operation of a business and is supplied to or prepared by any public
7 entity which is the subject of efforts by the supplying or preparing
8 person to maintain its secrecy and provides the preparing person an
9 advantage or an opportunity to obtain an advantage over those who do
10 not know or use it or which may derive independent economic value,
11 actual or potential, from not being generally known to, and not being
12 readily ascertainable by proper means by, any person that might obtain
13 economic value from its disclosure or use.

14 d. "Trade secret" ~~includes~~ means information, including a formula, pattern,
15 compilation, program, device, method, technique, and process, which:

16 a. ~~A computer software program and components of a computer software~~
17 ~~program which are subject to a copyright or a patent, and any formula,~~
18 ~~pattern, compilation, program, device, method, technique, or process supplied~~
19 ~~to any state agency, institution, department, or board which is the subject of~~
20 ~~efforts by the supplying person or organization to maintain its secrecy and that~~
21 ~~may derive~~

22 (1) Derives independent economic value, actual or potential, from not being
23 generally known to, and not being readily ascertainable by proper
24 means by, other persons ~~or organizations~~ that ~~might~~ can obtain
25 economic value from its disclosure or use; and

26 b. ~~A discovery or innovation which is subject to a patent or a copyright, and any~~
27 ~~formula, pattern, compilation, program, device, method, technique, or process~~
28 ~~supplied to or prepared by any public entity which is~~

29 (2) Is the subject of efforts ~~by the supplying or preparing entity, person,~~
30 ~~business, or industry~~ that are reasonable under the circumstances to
31 maintain its the secrecy ~~and that may derive independent economic~~

1 value, actual or potential, from not being generally known to, and not
2 being readily ascertainable by proper means by, any person who might
3 obtain economic value from its disclosure or use of the information.

4 3. ~~"Proprietary information" includes information received from a sponsor of research~~
5 ~~conducted by a public entity, as well as any discovery or innovation generated by~~
6 ~~that research, technical, financial, and marketing information and other documents~~
7 ~~related to the commercialization, and any other discovery or innovation produced~~
8 ~~by the public entity which an employee or the entity intends to commercialize.~~

9 4. This section does not limit or otherwise affect a record pertaining to any rule of the
10 state department of health or to any record pertaining to the application for a permit
11 or license necessary to do business or to expand business operations within this
12 state, except as otherwise provided by law.

13 ~~5.~~ 4. Unless made confidential under subsection 1, the following economic development
14 records and information are exempt:

15 a. Records and information pertaining to a prospective location of a business or
16 an industry, including the identity, nature, and location of the business or
17 industry, when no previous public disclosure has been made by the business
18 or industry of the interest or intent of the business or industry to locate in,
19 relocate within, or expand within this state. This exemption does not include
20 records pertaining to the application for permits or licenses necessary to do
21 business or to expand business operations within this state, except as
22 otherwise provided by law.

23 b. Trade secrets and commercial or financial information received from a
24 person, ~~business, or industry~~ that is interested in ~~or is,~~ applying for, or
25 receiving financing ~~or,~~ technical assistance, or other forms of business
26 assistance.

27 ~~6.~~ 5. Unless made confidential under subsection 1 or made exempt under subsection 5
28 4, bids or proposals received by a public entity in response to a request for
29 proposals by the public entity are exempt until ~~such time~~ all of the proposals have
30 been received and opened by the public entity or until ~~such time that~~ all oral
31 presentations regarding the proposals, if any, have been heard by the public entity.

1 Records included with any bid or proposal naming and generally describing the
2 entity submitting the proposal ~~shall be~~ are open.

3 **SECTION 5. AMENDMENT.** Section 54-60-02 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **54-60-02. Department of commerce - Divisions.** The North Dakota department of
6 commerce is created. All records, materials, supplies, and equipment used by the division of
7 community services, department of economic development and finance, and the department of
8 tourism are transferred to the department.

- 9 1. The department must consist of:
- 10 a. A division of community services;
 - 11 b. A division of economic development and finance;
 - 12 c. A division of tourism;
 - 13 d. A division of workforce development; ~~and~~
 - 14 e. A division of innovation and technology; and
 - 15 f. Any division the commissioner determines necessary to carry out this chapter.
- 16 2. The commissioner shall appoint the director of ~~any~~ each division ~~created by the~~
17 ~~commissioner under subsection 1. Effective August 1, 2003, the commissioner~~
18 ~~shall appoint the directors of the division of community services, division of~~
19 ~~economic development and finance, and division of workforce development.~~
20 ~~Effective August 1, 2005, the commissioner shall appoint the director of the division~~
21 ~~of tourism of the department.~~ Each director appointed by the commissioner serves
22 at the pleasure of the commissioner and is entitled to receive a salary set by the
23 commissioner within the limits of legislative appropriations. ~~Until August 1, 2003,~~
24 ~~the governor shall appoint the directors of the division of community services,~~
25 ~~division of economic development and finance, and division of workforce~~
26 ~~development and until August 1, 2005, the governor shall appoint the director of~~
27 ~~the division of tourism. The individuals appointed by the governor shall serve at~~
28 ~~the pleasure of the governor and are entitled to receive a salary set by the~~
29 ~~governor within the limits of legislative appropriations.~~

30 **SECTION 6.** A new section to chapter 54-60 of the North Dakota Century Code is
31 created and enacted as follows:

1 **Division of innovation and technology - Duties.** The division of innovation and
2 technology shall advise the governor and the commissioner in matters of innovation, science,
3 and technology and shall monitor and track innovation, science, and technology activities in the
4 state.

5 **SECTION 7. AMENDMENT.** Section 57-38-30.5 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **57-38-30.5. Corporate income tax credit for research and experimental**
8 **expenditures.** ~~Any~~ A corporation is allowed a credit against the tax imposed under this
9 chapter for the taxable year equal to ~~eight~~ twenty-five percent of the first one ~~and one-half~~
10 ~~million~~ thousand dollars of the qualified research expenses for the taxable year in excess of the
11 base period research expenses and equal to ~~four~~ twenty percent of all qualified research
12 expenses for the taxable year more than one ~~and one-half million~~ hundred thousand dollars in
13 excess of the base period research expenses.

14 1. For purposes of this section:

15 a. "Base period research expenses" means base period research expenses as
16 defined in section 41(c) of the Internal Revenue Code [26 U.S.C. 41(c)],
17 except it does not include research conducted outside the state of North
18 Dakota.

19 b. "Qualified research" means qualified research as defined in section 41(d) of
20 the Internal Revenue Code [26 U.S.C. 41(d)], except it does not include
21 research conducted outside the state of North Dakota.

22 c. "Qualified research expenses" means qualified research expenses as defined
23 in section 41(b) of the Internal Revenue Code [26 U.S.C. 41(b)], except it
24 does not include expenses incurred for basic research conducted outside the
25 state of North Dakota.

26 2. The credit allowed under this section for the taxable year may not exceed the
27 liability for tax under this chapter.

28 3. In the case of a corporation ~~which~~ that is a partner in a partnership or a member in
29 a limited liability company, the credit allowed for the taxable year may not exceed
30 an amount separately computed with respect to the corporation's interest in the
31 trade, business, or entity equal to the amount of tax attributable to that portion of

- 1 the corporation's taxable income which is allocable or apportionable to the
2 corporation's interest in the trade, business, or entity.
- 3 4. If the amount of the credit determined under this section for any taxable year
4 exceeds the limitation under subsection 2, the excess may be used as a research
5 credit carryback to each of the three preceding taxable years and a research credit
6 carryover to each of the fifteen succeeding taxable years or the taxpayer may
7 assign the excess to another taxpayer. ~~The~~ If the taxpayer elects to carry back or
8 carry over the credit, the entire amount of the excess unused credit for the taxable
9 year must be carried first to the earliest of the taxable years to which the credit may
10 be carried and then to each successive year to which the credit may be carried-
11 ~~The~~ and the amount of the unused credit which may be added under this
12 subsection may not exceed the taxpayer's liability for tax less the research credit
13 for the taxable year. If the taxpayer elects to assign an excess credit under this
14 subsection, the assignment must be made on a form prescribed by the tax
15 commissioner which must be signed by the taxpayers assigning and receiving the
16 assignment of the credit. A taxpayer's total assignments under this section may
17 not exceed one hundred thousand dollars.
- 18 5. If a taxpayer acquires or disposes of the major portion of a trade or business or the
19 major portion of a separate unit of a trade or business in a transaction with another
20 taxpayer, the taxpayer's qualified research expenses and base period must be
21 adjusted in the manner provided by section 41(f)(3) of the Internal Revenue Code
22 [26 U.S.C. 41(f)(3)].

23 **SECTION 8. TARGET INDUSTRY CLUSTER INDUSTRIES - REPORT TO**

24 **LEGISLATIVE COUNCIL.** During the 2007-08 interim, the department of commerce's target
25 industries report to the legislative council required under North Dakota Century Code section
26 54-60-11 must include a study of the cluster industries related to the state's target industries.
27 The study must include an inventory of innovation assets which may be relevant to the target
28 industries and related cluster industries; how target industries and related cluster industries may
29 be better aligned with state economic development activities and programs, such as centers of
30 excellence, economic development incentives, and higher education; and how to stimulate
31 development in the target industries and related cluster industries. The commissioner of

1 commerce shall report to the legislative council the outcome of the study and identify proposed
2 legislative changes necessary to implement the department of commerce's recommendations
3 to stimulate development in the target industries and related cluster industries for each of these
4 target industries.

5 **SECTION 9. APPROPRIATION.** There is appropriated out of any moneys in the
6 general fund in the state treasury, not otherwise appropriated, the sum of \$45,000, or so much
7 of the sum as may be necessary, to the department of career and technical education for the
8 purpose of funding innovation grants under section 3 of this Act, for the biennium beginning
9 July 1, 2007, and ending June 30, 2009.

10 **SECTION 10. EFFECTIVE DATE.** Section 7 of this Act is effective for taxable years
11 beginning after December 31, 2006.