

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

SENATE BILL NO. 2265
(Senator Andrist)
(Representative Froseth)

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to records of victims of domestic violence; and to amend and reenact subsection 4 of section 28-32-08, subsection 2 of section 28-32-10, subsection 5 of section 28-32-19, section 28-32-33, subsections 2, 6, and 8 of section 44-04-18, subsections 1 and 6 of section 44-04-18.7, subsection 4 of section 44-04-18.10, section 44-04-18.13, subsection 2 of section 44-04-28, and section 57-40.6-07 of the North Dakota Century Code, relating to fees and discovery in adjudicative proceedings, fees for copies, providing copies of records, personal records in criminal files, release of confidential records, lists of minors, release of social security numbers, and release of 911 records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 28-32-08 of the North Dakota Century Code is amended and reenacted as follows:

4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge ~~for the actual cost of providing copies~~ a fee for a copy of the regulatory analysis as allowed under section 44-04-18.

SECTION 2. AMENDMENT. Subsection 2 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The agency shall mail or deliver a copy of the agency's full notice to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to each person who has made a timely request to the agency for a copy of the notice. The agency may mail or otherwise provide a copy of the agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to each member of the legislative assembly whose name appeared as a sponsor or cosponsor of legislation enacted during the most recent session of the legislative assembly which is being implemented by the proposed rule and to any person requesting a copy. The agency may charge persons who are not members of the legislative assembly ~~fees for the actual cost of providing~~ copies of the proposed rule as allowed under section 44-04-18.

SECTION 3. AMENDMENT. Subsection 5 of section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

5. The code must be arranged, indexed, and printed or duplicated in a manner to permit separate publication of portions thereof relating to individual agencies. An agency may print as many copies of such separate portions of the code as it may require. If the office of the legislative council does not publish the code supplement due to technological problems or lack of funds, the agency whose rules would have been published in the code supplement shall provide a copy of the rules to any person upon request. The agency may charge ~~for the actual cost of providing copies~~ a fee for a copy of the rules as allowed under section 44-04-18.

SECTION 4. AMENDMENT. Section 28-32-33 of the North Dakota Century Code is amended and reenacted as follows:

28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.

1. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. ~~In an adjudicative proceeding, a party must first show good cause, by written petition, and get the written approval of the hearing officer before obtaining discovery from an administrative agency.~~
3. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-42 after issuance of the final order by the agency. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it.
4. 3. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
5. 4. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the prevailing party in an application under this subsection.

SECTION 5. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Domestic violence record information of law enforcement exempt. The address, telephone number, or any identifying information that, if released, could reasonably be used to locate a victim or alleged victim of domestic violence contained in any record maintained by a law enforcement facility is exempt from section 44-04-18 and may be redacted from the record before it is released.

SECTION 6. AMENDMENT. Subsections 2, 6, and 8 of section 44-04-18 of the North Dakota Century Code are amended and reenacted as follows:

2. Upon request for a copy of specific public records, any entity subject to subsection 1 shall furnish the requester one copy of the public records requested. A request need not be made in person or in writing, and the copy must be mailed upon request. A public entity may charge up to twenty-five cents per impression of a paper copy. As used in this section, "paper copy" means a one-sided or two-sided duplicated copy of a size not more than eight and one-half by fourteen inches [19.05 to 35.56 centimeters]. For any copy of a record that is not a paper copy as defined in this section, the public entity may charge a reasonable fee for making the copy. As used in this section, "reasonable fee" means the actual cost to the public entity of making the copy, including labor, materials, and equipment. The entity may charge for the actual cost of postage to mail a copy of a record. An entity may require payment before locating, redacting, making, or mailing the

copy, ~~or both~~. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for locating records if locating the records requires more than one hour. An entity may impose a fee not exceeding twenty-five dollars per hour per request, excluding the initial hour, for excising confidential or closed material under section 44-04-18.10. If the entity is not authorized to use the fees to cover the cost of providing or mailing the copy, or both, or if a copy machine is not readily available, the entity may make arrangements for the copy to be provided or mailed, or both, by another entity, public or private, and the requester shall pay the fee to that other entity. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

6. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or ~~adversarial-administrative~~ adjudicative proceeding as defined in subsection 1 of section 28-32-01 in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or ~~adversarial-administrative~~ adjudicative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
8. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in ~~subsection~~ subsections 2 and 3.

SECTION 7. AMENDMENT. Subsections 1 and 6 of section 44-04-18.7 of the North Dakota Century Code are amended and reenacted as follows:

1. Active criminal intelligence information and active criminal investigative information are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic and the date the file was established. The list required under this subsection is subject to section 44-04-18. ~~Criminal intelligence and investigative information that is not considered "active" is not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota to the extent that the information is personal information. Personal information of any person contained in an active or nonactive file is an exempt record as defined in subsection 5 of section 44-04-17.1.~~
6. "Personal information" means a person's medical ~~information~~ records; motor vehicle operator's identification number; social security number; ~~and~~ any credit, debit, or electronic fund transfer card number; ~~and any financial account numbers~~.

SECTION 8. AMENDMENT. Subsection 4 of section 44-04-18.10 of the North Dakota Century Code is amended and reenacted as follows:

4. Unless otherwise prohibited by federal law, records of a public entity which are otherwise closed or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. For the purpose of this subsection, "public entity" is limited to those entities defined in subdivision a or b of subsection 12 of section 44-04-17.1.

SECTION 9. AMENDMENT. Section 44-04-18.13 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.13. Lists of children minors. Any record of a public entity that is a compilation of ~~children's~~ minor's names, addresses, phone numbers, or any combination thereof, is exempt.

SECTION 10. AMENDMENT. Subsection 2 of section 44-04-28 of the North Dakota Century Code is amended and reenacted as follows:

2. A social security number may be released:
 - a. For purposes of participation in retirement or other employment benefits programs; ~~or~~
 - b. As authorized by the individual to whom the social security number is assigned, that individual's lawful agent or guardian, or by order of a court; or
 - c. To another public entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential status of the numbers.

SECTION 11. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. Unpublished names and telephone numbers generated by a 911 coordinator or 911 public safety answering point or provided to a 911 coordinator or public safety answering point under section 57-40.6-06 are confidential and may be used only for verifying the location or identity, or both, for response purposes, of a person calling a 911 answering point for emergency help or by the 911 coordinator or public safety answering point for the purpose of a public safety agency notifying a person of an emergency. Published names and telephone numbers maintained by a 911 coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the 911 coordinator for the purpose of verifying and correcting names and addresses used for official purposes. A record obtained for the purpose of providing services in an emergency and which reveals the address of a person requesting emergency service or reporting an emergency by accessing an emergency telephone number 911 system is exempt from section 44-04-18 and may be redacted from the record before it is released.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2265.

Senate Vote: Yeas 45 Nays 1 Absent 1

House Vote: Yeas 90 Nays 2 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,
at _____ o'clock _____ M.

Secretary of State