

OCCUPATIONAL AND PROFESSIONAL LAW AND RULES VIOLATION PENALTIES - BACKGROUND MEMORANDUM

BACKGROUND

Section 3 of 2007 Senate Bill No. 2060 (attached) directs a Legislative Council study of laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code (NDCC) and rules contained in the North Dakota Administrative Code regulating occupations and professions.

Senate Bill No. 2060 was introduced by the State Board of Plumbing to increase meeting compensation for members of the board and to increase penalties for violation of plumbing laws or the rules adopted by the board and the State Plumbing Code. North Dakota Century Code Section 43-18-24 provided, before introduction of Senate Bill No. 2060, that a violation of any provision of Chapter 43-18 or the State Plumbing Code is an infraction. The bill as introduced by the State Board of Plumbing would have added rules adopted by the board to the laws and plumbing code and increased the penalty from an infraction to a Class B misdemeanor. During discussion of the penalty provision, members of the standing committees considering the bill expressed concern about the lack of specific statutory provisions for which a violation would be punishable and about adding rules adopted by the board and making them punishable under the proposed criminal penalty. Ultimately, the bill was enacted with specific statutory provisions listed for which a violation would be a Class B misdemeanor. References to rules adopted by the board and the State Plumbing Code were eliminated from the penalty provision. The study language was added to Senate Bill No. 2060 after a brief review of occupational and professional laws and rules and penalty provisions. Committee members expressed the hope that interim study could examine such provisions for uniformity, clarity, and whether penalties should apply to statutory provisions, rules provisions, or both.

STATUTORY PROVISIONS

Variations exist in statutory provisions governing occupations and professions, which are generally contained in Title 43 of the North Dakota Century Code. It appears the following statutory provisions should be examined by the committee.

ACCOUNTANTS

43-02.2-14. Criminal penalties.

1. If by reason of an investigation, the board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of this chapter, the board may bring its information to the attention of a state's attorney or the attorney general or other appropriate law enforcement officer who may cause appropriate criminal proceedings to be brought.
2. Any person or firm who knowingly violates any provision of section 43-02.2-12 is guilty of a class A misdemeanor.

ARCHITECTS AND LANDSCAPE ARCHITECTS

43-03-21. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

BARBERS

43-04-45. Penalty. Any person who shall:

1. Violate any of the provisions of sections 43-04-21, 43-04-22, 43-04-30, and 43-04-43;
2. Permit any person in that person's employ, supervision, or control to practice as an apprentice or barber unless the person employed, supervised, or controlled has a certificate of registration as a registered apprentice or barber;
3. Obtain or attempt to obtain a certificate of registration by the payment of money other than the required fee, or any other thing of value, or by fraudulent misrepresentations;
4. Practice or attempt to practice by fraudulent misrepresentations; or
5. Willfully fail to display a certificate of registration as is required by this chapter,

is guilty of a class B misdemeanor. A violation of any provision of this chapter or of any rule, subpoena, or order of the board lawfully made pursuant hereto, except as otherwise provided herein, is a class B misdemeanor.

PODIATRISTS

43-05-17. Penalty. A person violating any provision of this chapter for which another penalty is not provided is guilty of a class B misdemeanor. In addition, the civil remedy of injunction is available to the board to restrain and enjoin any violation of this chapter without the need to prove actual damages to any person.

CHIROPRACTORS

43-06-19. Penalty. Any person who violates any of the provisions of this chapter, and any person who, without complying with the provisions of this chapter:

1. Practices or attempts to practice chiropractic;
2. Advertises as a chiropractor; or
3. Uses the terms or letters, doctor of chiropractic, chiropractor, D.C., chiropractic physician, or any other title that will induce the belief that the person is engaged in the practice of chiropractic,

is guilty of a class B misdemeanor.

CONTRACTORS

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.

FUNERAL SERVICE PRACTITIONERS

43-10-20. Penalty. A person practicing or representing that the person is practicing funeral service, or preparing the dead for burial or shipment in violation of this chapter, is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction is available to restrain and enjoin violations of any provision of this chapter without proof of actual damages sustained by any person and without the board being required to file an undertaking.

43-10-24. Penalty. Any person willfully violating any of the provisions of sections 43-10-21 through 43-10-23, except rules and regulations promulgated under section 43-10-22, is guilty of a class B misdemeanor. Any person who willfully violates a rule or regulation promulgated under section 43-10-22 is guilty of an infraction.

NURSES

43-12.1-15. Violation - Penalties. It is a class B misdemeanor for a person to willfully:

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 that might enable an individual 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 specialty practice registered nurse, a registered nurse, a licensed practical nurse, or an unlicensed assistive person through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record that was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, a licensed practical nurse, or an unlicensed assistive person as defined by this chapter unless licensed to do so.
5. Conduct any education program preparing an individual for nursing licensure or registration unless the program has been approved by the board.
6. Employ a person to practice nursing or perform nursing interventions unless the person is licensed or registered by the board.

OPTOMETRISTS

43-13-27. Penalty. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

PHARMACISTS

43-15-14. Unlawful practice of pharmacy.

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.

43-15-42. Penalty for violation of rule regulating pharmacies. Any person who violates any rule legally adopted by the board pursuant to this chapter is guilty of an infraction.

43-15-44. Penalty for violations. Any person who willfully violates any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

WHOLESALE DRUG DISTRIBUTORS

43-15.1-02. Prohibited drug purchase or receipt - Penalty. No person may knowingly purchase or receive any prescription drug from any source other than a wholesale drug distributor, manufacturer, pharmacy distributor, pharmacy, or other person licensed pursuant to the laws of this state except where otherwise provided. A person violating this section is guilty of a class A misdemeanor. A second violation is a class C felony.

PHYSICIANS AND SURGEONS

43-17-34. Practicing without a license - Violation of chapter - Penalty. Any person who practices medicine in this state without complying with the provisions of this chapter, and any person who violates any of the provisions of this chapter for which

another penalty is not specified is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

MEDICAL COMPETENCY

43-17.1-05.1. Reporting requirements. A physician, a physician assistant, or a fluoroscopy technologist, a health care institution in the state, a state agency, or a law enforcement agency in the state having actual knowledge that a licensed physician, a physician assistant, or a fluoroscopy technologist may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board shall promptly report that information in writing to the investigative panel of the board. A medical licensee or any institution from which the medical licensee voluntarily resigns or voluntarily limits the licensee's staff privileges shall report that licensee's action to the investigative panel of the board if that action occurs while the licensee is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible medical incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee an investigative panel shall, or on its own motion an investigative panel may, investigate any evidence that appears to show a licensee is or may have committed any of the grounds for disciplinary action provided by law or by rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. A physician who obtains information in the course of a physician-patient relationship in which the patient is another physician is not required to report if the treating physician successfully counsels the other physician to limit or withdraw from practice to the extent required by the impairment. A physician who obtains information in the course of a professional peer review pursuant to chapter 23-34 is not required to report pursuant to this section. A physician who does not report information obtained in a professional peer review is not subject to criminal prosecution or civil liability for not making a report. For purposes of this section, a

person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A physician, physician assistant, or fluoroscopy technologist who violates this section is subject to administrative action by the North Dakota state board of medical examiners as specified by law or by administrative rule.

PLUMBERS

43-18-11.3. Advertising prohibited - Exceptions - Penalty.

1. Except as provided in this section, where a plumbing license is required under section 43-18-11 or by local ordinance, no person offering plumbing contracting services may advertise as a plumbing contractor, master plumber, or journeyman plumber unless the person employs a licensed journeyman plumber, or the person is a licensed master plumber. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.
- b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
 - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
 - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars or imprisonment not to exceed thirty days, or both, may be imposed.

43-18-24. Violation of chapter - Penalty. Any person that violates the state plumbing code adopted under section 43-18-09; violates section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23; or works under the license of another person in a manner that is in violation of section 43-18-13 is guilty of a class B misdemeanor.

WATER CONDITIONING CONTRACTORS AND INSTALLERS

43-18.1-09. Violations - Penalty. Any person who willfully violates any of the provisions of this chapter is guilty of an infraction.

SEWER AND WATER INSTALLERS

43-18.2-12. Violation - Penalty. Any person who willfully violates this chapter is guilty of an infraction.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

43-19.1-31. Violation and penalties. Any person who practices, or offers to practice, engineering in this state without being registered in accordance with the provisions of this chapter; or any person using or employing the words "engineer" or "engineering" or "professional engineer" or "surveyor" or "land surveyor" or any modification or derivative thereof in that person's name or form of business or activity, except as authorized in this chapter; or any person presenting or attempting to use the certificate of registration or the seal of another; or any person who gives any false or forged evidence of any kind to the board or to any member thereof in obtaining or attempting to obtain a certificate of registration; or any person who falsely impersonates any other registrant of like or different name; or any person who attempts to use an expired or revoked or nonexistent certificate of registration; or who practices or offers to practice when not qualified; or any person who falsely claims that that person is registered under this chapter; or any person who violates any of the provisions of this chapter; is guilty of a class B misdemeanor. It is the duty of all duly constituted officers of the state, and of all political subdivisions thereof, to enforce the provisions of this chapter.

DENTAL HYGIENISTS

43-20-09. Violation of chapter a misdemeanor. Any person violating any provision of this chapter is guilty of a class B misdemeanor.

REAL ESTATE PROFESSIONALS

43-23-11.1. Investigations, grounds for refusal, suspension or revocation of license - Hearing - Appeal.

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall,

investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and has the power to suspend or revoke a license, impose a monetary fine and actual costs incurred by the commission in the investigation and prosecution of the complaint, require course attendance, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:

- a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
- b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
- c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to that person's injury or damage.
- d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom the licensee acts.
- e. Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others; commingling funds of others with the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.
- f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
- g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
- h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
- i. Offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
- k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesperson under this chapter.
- m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for the licensee or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.
- n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
- o. Failure by a broker to deliver to the party or parties represented by the broker a complete detailed closing statement in every real estate transaction, at the time said transaction is consummated, showing all of the receipts and disbursements handled by such broker for the party or parties

- represented by the broker, and to retain true copies of such statements in the broker's files.
- p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.
 - q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
 - r. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
 - s. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
 - t. Failure of a salesperson to place with that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
 - u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
 - v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
- w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
2. If the commission declines or fails to approve an application submitted to it, it shall immediately give notice of that fact to the applicant, and upon request from such applicant, filed within twenty days after the receipt of such notice, shall fix a time and place for hearing, of which twenty days' notice must be given to such applicant and to other persons interested or protesting, to offer evidence relating to the application. In such cases the commission shall fix the time for such hearing on a date within sixty days from receipt of the request for the particular hearing, provided the time of hearing may be continued from time to time with the consent of the applicant. As a result of such hearing, the commission may either approve the application if all other applicable provisions of this chapter have been met, and permit the applicant to take the examination to determine whether the applicant shall be licensed, or it may sustain its prior decision refusing to approve the application.
 3. A license may not be revoked or suspended, a monetary fine or actual costs may not be imposed, course attendance may not be required, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all proceedings for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand of licenses or licensees.
 4. In any order or decision issued by the commission in resolution of a

disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed two thousand five hundred dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

43-23-17. Penalty. Any person violating any of the provisions of this chapter is guilty of an infraction.

REAL ESTATE APPRAISERS

43-23.3-23. Penalties. A person acting or purporting to act as an apprentice, licensed, or certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser, apprenticed, licensed, or certified in another state, who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a temporary permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

MASSAGE THERAPISTS

43-25-19. Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person.

PHYSICAL THERAPISTS

43-26.1-17. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

DENTISTS

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ,

keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.

2. For any dentist to help or assist any unlicensed person to perform any act or operation that is defined as the practice of dentistry.
3. For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.
4. For any dentist to work or cooperate with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.
5. For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board which must contain:
 - a. The name and address of such unlicensed person;
 - b. The patient's name or number, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;
 - c. The date on which it was written;
 - d. A prescription of the work to be done, with diagram, if necessary;
 - e. A specification of the type and quality of materials to be used; and
 - f. The signature of the dentist and the number of the dentist's North Dakota license.

Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or the board's agent for two years.

6. For any dentist:
 - a. To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;
 - b. To fail to retain a duplicate copy thereof for two years; or

- c. To refuse to allow the board or the board's agent to inspect such prescription during the two-year period of time.
- 7. For any unlicensed person:
 - a. To perform any such service without first having obtained such prescription;
 - b. To fail to retain the original thereof for two years; or
 - c. To refuse to allow the board or the board's agent to inspect it during such two-year period of time.
- 8. For any person:
 - a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;
 - b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;
 - c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or
 - d. To practice dentistry in this state without a license and certificate of registration.
- 9. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

VETERINARIANS

43-29-17. Unlawful practice of veterinary medicine - Penalty - Civil remedy. Any person who:

- 1. Practices veterinary medicine, surgery, or dentistry in this state without compliance with the provisions of this chapter;

- 2. Willfully and falsely claims or pretends to have or hold a certificate of registration issued by the state board of veterinary medical examiners; or
- 3. Willfully and falsely, with intent to deceive the public, claims or pretends to be a graduate of, or to hold a degree or diploma showing the satisfactory completion of a course in veterinary science in a school, college, or university recognized by the board;

is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person, upon application and unanimous vote of all members of the state board of veterinary medical examiners.

INVESTIGATIVE AND SECURITY SERVICES

43-30-10. Penalty - Injunction - Unlicensed activity. Any person who violates this chapter or rules adopted under this chapter, or any person who provides a private investigative service or private security service without a current license issued by the board, or falsely states or represents that the person has been or is an investigative officer or employed by an investigative or security officer or agency is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter, without proof of actual damages sustained by any person. An injunction does not preclude criminal prosecution and punishment of a violator. The board is not liable for the lost income, costs, or any other expenses that may be incurred by a person against whom an injunction is sought, and the board may not be required to provide security or a bond. The board may seek costs for reimbursement of expenses for obtaining an injunction, including attorney's fees. In addition to issuing the injunction, the court may impose an administrative fee consistent with section 43-30-10.1 if the person has violated a provision of this chapter.

DETECTION OF DECEPTION EXAMINERS

43-31-17. Violation - Penalty. Any person who violates any provision of this chapter or any person who falsely states or represents

that that person has been or is an examiner or trainee is guilty of a class B misdemeanor.

PSYCHOLOGISTS

43-32-31. Violation - Penalty - Injunction.

Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

HEARING AID DEALERS

43-33-18. Violations - Penalty - Injunction.

Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

WATER WELL CONTRACTORS

43-35-22. Contracting without certification - Penalty.

Any person contracting to drill a water well or monitoring well, drill a pump or pitless unit, or drill a geothermal system for another without being certified in accordance with this chapter, or otherwise violating this chapter, is guilty of an infraction.

PROFESSIONAL SOIL CLASSIFIERS

43-36-25. Violation - Penalty. Any person who practices or offers to practice professional soil classifying in this state without being registered in accordance with the provisions of this chapter, or any person using or employing the words "soil classifier" or "professional soil classifier" or any modification or derivative thereof in its name or form of business or activity except as authorized in this chapter, or any person presenting the certificate of registration of another, or any person who falsely impersonates any other registrant of like or different name, or any person who attempts to use an expired or revoked or nonexistent certificate of registration, or who practices or offers to practice when not qualified, or any person who falsely claims that that person is registered under this chapter, or any person who violates any of the other provisions of this chapter is guilty of a class B misdemeanor.

AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS

43-37-18. Penalty. Any person who violates this chapter is guilty of a class A misdemeanor.

ATHLETIC TRAINERS

43-39-11. Penalty. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.

OCCUPATIONAL THERAPISTS

43-40-18. Penalty - Injunction. Any person who violates section 43-40-02 and subsection 1 of section 43-40-16 is guilty of a class B misdemeanor. In addition to the criminal penalty provided, the civil remedy of an injunction is available to restrain and enjoin violations of any provisions of this chapter.

SOCIAL WORKERS

43-41-14. Penalty. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

RESPIRATORY CARE PRACTITIONERS

43-42-07. Penalty. Any person who violates this chapter or any rules adopted under this chapter is guilty of an infraction.

ENVIRONMENTAL PRACTITIONER

43-43-08. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

DIETITIANS AND NUTRITIONISTS

43-44-17. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

ADDICTION COUNSELORS

43-45-08. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

COUNSELORS

43-47-10. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

CLINICAL LABORATORY PERSONNEL

43-48-16. Penalty. Any person who violates any provisions of this chapter is guilty of a class B misdemeanor.

MARRIAGE AND FAMILY THERAPY PRACTITIONERS

43-53-12. Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

HOME INSPECTORS

43-54-02. Home inspector registration required - Penalty. The registrar shall issue and renew registrations to home inspectors pursuant to this chapter. An individual may not perform a home inspection for compensation unless registered under this chapter. An individual who violates this chapter is guilty of a class B misdemeanor.

SUGGESTED STUDY APPROACH

The statutory provisions above apply to 44 separate occupational and professional licensing boards or commissions. Under the statutory schedule of Administrative Rules Committee meetings, there will be five meetings before the committee report to the Legislative Council in 2008 (September and December 2007 and March, June, and September 2008). If the committee schedules review of testimony from nine boards' or commissions' representatives for each committee meeting and allows 15 minutes for testimony consideration of each, two hours and 15 minutes will be required on each meeting agenda.

As each occupational or professional board or commission is requested to address the committee under this study, it should be requested to provide information in uniform format, including the following:

1. Whether penalty provisions under laws and rules administered by the board or commission could be more specific in terms of identifying prohibited behavior.
2. If rules violations are subject to penalties, whether it is appropriate to move the prohibition to statutory status by introducing legislation.
3. Whether the culpability standard for violations subject to penalties should be for intentional, reckless, willful, or negligent behavior or no culpability standard should be applied.
4. Whether the penalty provisions under laws and rules administered by the board or commission should be uniform with penalties that apply for other occupations and professions and, if not, what special circumstances exist to justify different penalties for the laws and rules that apply to this occupation or profession.

It appears it would be appropriate to seek advice from the Attorney General, as the chief law enforcement officer of the state, on suggested issues for committee consideration during this study.

ATTACH:1

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

SENATE BILL NO. 2060
(Government and Veterans Affairs Committee)
(At the request of the State Board of Plumbing)

AN ACT to amend and reenact sections 43-18-05 and 43-18-24 of the North Dakota Century Code, relating to plumbing board member compensation and plumbing code violations; to provide for a legislative council study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-18-05 of the North Dakota Century Code is amended and reenacted as follows:

43-18-05. Members of board and employees - Compensation. Each appointed member of the board ~~shall is entitled to receive twenty dollars per day for each day actually engaged compensation in an amount determined by the board, not to exceed one hundred dollars per day, for actual services rendered in the performance of the member's duties under this chapter, and all members each member and employee of the board, and all employees thereof, shall~~ is entitled to receive ~~their~~ traveling expenses incurred in the performance of ~~their~~ official duties. Allowances for traveling expenses must be as provided by law for state officials and employees. ~~All such~~ The compensation and expense must be paid out of the state plumbing board fund. The compensation provided for in this section may not be paid to any member of the board who receives salary or other compensation as a regular employee of the state or any of its political subdivisions or any institution or industry operated by the state.

SECTION 2. AMENDMENT. Section 43-18-24 of the North Dakota Century Code is amended and reenacted as follows:

43-18-24. Violation of chapter - Penalty. Any person ~~who that~~ violates ~~any of the provisions of this chapter or of the state plumbing code, or who fails to do any act required by said code, section 43-18-10, 43-18-11, 43-18-11.4, 43-18-17.2, or 43-18-23 or works under the license of another person in a manner that is in violation of section 43-18-13~~ is guilty of ~~an infraction~~ a class B misdemeanor.

SECTION 3. LEGISLATIVE COUNCIL STUDY - CRIMINAL PENALTIES FOR VIOLATING OCCUPATIONAL LICENSURE LAWS AND RULES. The legislative council shall consider studying, during the 2007-08 interim, the laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The study must include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and entire titles of the North Dakota Administrative Agencies Practice Act regulating occupations and professions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.