

OFFICES AND OFFICERS

CHAPTER 385

HOUSE BILL NO. 1099

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

TRADE SECRET CONFIDENTIALITY

AN ACT to amend and reenact section 44-04-18.4 of the North Dakota Century Code, relating to confidentiality of trade secret, proprietary, commercial, and financial information; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Trade secret, proprietary, commercial, and financial information is confidential if it is of a privileged nature and it has not been previously publicly disclosed.
2. Under this section, unless the context otherwise requires:
 - a. "Commercial information" means information pertaining to buying or selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - b. "Financial information" means information pertaining to monetary resources of a person that has not been previously publicly disclosed and that if the information were to be disclosed would impair the public entity's future ability to obtain necessary information or would cause substantial competitive injury to the person from which the information was obtained.
 - c. "Proprietary information" includes:
 - (1) Information shared between a sponsor of research or a potential sponsor of research and a public entity conducting or negotiating an agreement for the research.
 - (2) Information received from a private business that has entered or is negotiating an agreement with a public entity to conduct research or manufacture or create a product for potential commercialization.

- (3) A discovery or innovation generated by the research information, technical information, financial information, or marketing information acquired under activities described under paragraph 1 or 2.
 - (4) A document specifically and directly related to the licensing or commercialization resulting from activities described under paragraph 1, 2, or 6.
 - (5) Technical, financial, or marketing records that are received by a public entity, which are owned or controlled by the submitting person, are intended to be and are treated by the submitting person as private, and the disclosure of which would cause harm to the submitting person's business.
 - (6) A discovery or innovation produced by the public entity that an employee or the entity intends to commercialize.
 - (7) A computer software program and components of a computer software program that are subject to a copyright or a patent and any formula, pattern, compilation, program, device, method, technique, or process supplied to a public entity that is the subject of efforts by the supplying person to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that might obtain economic value from its disclosure or use.
 - (8) A discovery or innovation that is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, combination of devices, method, technique, technical know-how or process that is for use, or is used, in the operation of a business and is supplied to or prepared by a public entity that is the subject of efforts by the supplying or preparing person to maintain its secrecy and provides the preparing person an advantage or an opportunity to obtain an advantage over those who do not know or use it or that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, a person that might obtain economic value from its disclosure or use.
- d. "Trade secret" includes means information, including a formula, pattern, compilation, program, device, method, technique, technical know-how, or process, that:
- a. A computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might can obtain economic value from its disclosure or use; and
- b. A discovery or innovation which is subject to a patent or a copyright, and any formula, pattern, compilation, program, device, method, technique, or process supplied to or prepared by any public entity which is
- (2) Is the subject of efforts by the supplying or preparing entity, person, business, or industry that are reasonable under the circumstances to maintain its the secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, any person who might obtain economic value from its disclosure or use of the information.
3. "Proprietary information" includes information received from a sponsor of research conducted by a public entity, as well as any discovery or innovation generated by that research, technical, financial, and marketing information and other documents related to the commercialization, and any other discovery or innovation produced by the public entity which an employee or the entity intends to commercialize.
4. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.
- 5- 4. This section does not limit the release or use of records obtained in an investigation by the attorney general or other law enforcement official.
5. Unless made confidential under subsection 1, the following economic development records and information are exempt:
- a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state, or partner with a public entity to conduct research or to license a discovery or innovation. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
- b. Trade secrets and proprietary, commercial, or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or, technical assistance, or other forms of business assistance.

6. Unless made confidential under subsection 1 or made exempt under subsection 5, bids or proposals received by a public entity in response to a request for proposals by the public entity are exempt until ~~such time~~ all of the proposals have been received and opened by the public entity or until ~~such time that~~ all oral presentations regarding the proposals, if any, have been heard by the public entity. Records included with any bid or proposal naming and generally describing the entity submitting the proposal ~~shall be~~ are open.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 21, 2007

Filed March 21, 2007

CHAPTER 386

HOUSE BILL NO. 1134

(Education Committee)

(At the request of the State Board for Career and Technical Education)

EDUCATION AND TRAINING SYSTEM FOLLOWUP INFORMATION

AN ACT to amend and reenact section 44-04-18.14 and subsection 3 of section 52-01-03 of the North Dakota Century Code, relating to release and use of information provided to the followup information on North Dakota education and training system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.14 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.14. Certain records of occupational information coordinating committee - Exempt Information provided to the followup information on North Dakota education and training system. Records provided to

1. Except as provided in this section, the North Dakota occupational information coordinating committee by any person for use in the followup information on North Dakota education and training system may not release information provided to it for research or statistical purposes may only be used by a participating agency in any manner that identifies an individual.
2. The followup information on North Dakota education and training system may use personally identifiable information to prepare produce aggregate data compilations that do not identify any individual and may not be disclosed to the public by the occupational information coordinating committee. A request for disclosure of the records under section 44-04-18 or section 6 of article XI of the Constitution of North Dakota must be directed to the person or entity that has provided the records to the occupational information coordinating committee statistics that may be provided to a participating agency.
3. Unless prohibited by state or federal law, the followup information on North Dakota education and training system may provide personally identifiable information to a participating agency, but may not provide that information to any other person.
4. Unless prohibited by state or federal law, a participating agency may use personally identifiable information to fulfill its obligations for state and federal statistical reporting. Personally identifiable information provided by a participating agency to the followup information on North Dakota education and training system which the followup information on North Dakota education and training system releases to another participating agency may not be used or released for any other purpose

by that other participating agency without the consent of the identified individual or as otherwise authorized by law.

SECTION 2. AMENDMENT. Subsection 3 of section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Job service North Dakota may provide workforce safety and insurance, the labor commissioner, the driver's license division of the department of transportation, the department of human services, the department of commerce, the state tax commissioner, and the ~~North Dakota occupational information coordinating committee~~ followup information on North Dakota education and training system with information obtained pursuant to the administration of the unemployment insurance program, and may enter into interagency agreements with those entities for the exchange of information that will enhance the administration of the unemployment insurance program. Any information furnished pursuant to this subsection or pursuant to interagency agreements authorized by this subsection is to be used for governmental purposes only.

Approved April 10, 2007
Filed April 11, 2007

CHAPTER 387

SENATE BILL NO. 2160

(Senators Robinson, Grindberg, Wardner)
(Representatives Aarsvold, N. Johnson, Martinson)

HIGHER EDUCATION NONPROFIT ORGANIZATION RECORDS

AN ACT to amend and reenact section 44-04-18.15 of the North Dakota Century Code, relating to records of nonprofit organizations providing support for higher education institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.15 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.15. Fundraising and donor records of board of higher education and university system, and affiliated nonprofit organizations exempt. Any donor or prospective donor name, address, telephone number, electronic mail address, estate planning information, tax record or financial record information, or other personal information or correspondence received or retained by a board of higher education or university system officer or employee is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota, or by an affiliated nonprofit organization that provides support to and is organized and operated for the benefit of an institution under the authority of the board of higher education is exempt. For the purposes of this section, "financial information" includes data that provides details regarding a gift, a payment schedule of a gift, the form of a gift, or the specific amount of a gift made by a donor.

Approved May 2, 2007

Filed May 3, 2007

CHAPTER 388

SENATE BILL NO. 2265

(Senator Andrist)
(Representative Froseth)

OPEN RECORDS EXEMPTIONS

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~~ 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.

Approved May 2, 2007
Filed May 3, 2007

CHAPTER 389

SENATE BILL NO. 2196

(Senators Hacker, Klein, J. Lee)
(Representatives Boe, Heller, Potter)

NOTARY DISCIPLINARY PROCEEDINGS AND ACTS

AN ACT to create and enact section 44-06-13.2 of the North Dakota Century Code, relating to disciplinary proceedings for a notary public; and to amend and reenact sections 44-06-02, 44-06-12, and 44-06-13.1 of the North Dakota Century Code, relating to notary commissions and to prohibited acts by a notary public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-02 of the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state in the notary's legal name. Before issuing a commission, the secretary of state may require proof acceptable to the secretary of state of the notary's legal name. The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect thirty-six dollars for the issuance of the commission. The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of appointments and the date of the expiration of the appointments. The secretary of state shall notify each notary public by mail at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. The notice must be addressed to the notary public at the last-known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

SECTION 2. AMENDMENT. Section 44-06-12 of the North Dakota Century Code is amended and reenacted as follows:

44-06-12. Notary public commission - Venue - Date of expiration - Form of jurat. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment of the type set out in chapter 47-19, shall legibly print, stamp, or type the notary's name and endorse include the date of the expiration of the commission. Each jurat or certificate of acknowledgment must also contain the name of the state and county where the notarial act is being performed. The endorsement expiration date must be stamped or printed upon the instrument and must be substantially in the following form:

My commission expires _____.

Each jurat must be substantially in the following form:

Subscribed and sworn to before me on _____, _____:

(Notary Seal) _____

(signature of notary)

Notary Public

My commission expires _____

SECTION 3. AMENDMENT. Section 44-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

44-06-13.1. Prohibited acts - Penalty.

1. A notary public may not notarize a signature on a document if:
 - 4- a. The document was not first signed or re-signed in the presence of the notary public, in the case of a jurat, or in the case of a certificate of acknowledgment, was not acknowledged in the presence of the notary public.
 - 2- b. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
 - 3- c. The signature is that of the notary public or the spouse of the notary public.
 - 4- d. Except as otherwise provided by law, the notary public uses a name or initial in notarizing the document other than as it appears on the notary's commission. However, such an act by a notary by itself does not affect the validity of the document.
 - 5- e. The date of the jurat or certificate of acknowledgment is not the actual date the document is to be notarized or the jurat or certificate of acknowledgement is undated.
 - 6- f. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
 - 7- g. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgement or in any other way is impersonating or assuming the identity of another notary.
 - 8- h. ~~Within five years of the date of issuance of a commission or renewal of a commission, the notary is convicted of a criminal offense which the secretary of state determines has a direct bearing upon the notary's ability to serve the public as a notary public~~ The signature is on a blank or incomplete document.
 - i. In the case of a document drafted in a language other than English, the document is not accompanied by a permanently affixed and accurate written English translation.
 - j. Except as otherwise provided by law:
 - (1) The document is a copy or certified copy of any vital record authorized or required by law to be registered or filed;

- (2) The document is a copy or certified copy of an instrument entitled by law to be recorded; or
 - (3) The document is a copy or certified copy of a public record containing an official seal.
2. A notary may not make or purport to make any certified copy of a vital record, a recordable instrument, or a public record containing an official seal as described in subdivision j of subsection 1.
3. A notary public who violates this section is guilty of an infraction and the notary public's commission may be revoked by the secretary of state or the secretary of state may impose a lesser sanction using the procedure under chapter 28-32.

SECTION 4. Section 44-06-13.2 of the North Dakota Century Code is created and enacted as follows:

44-06-13.2. Disciplinary proceedings.

1. The secretary of state may deny, revoke, or suspend a commission granted under this chapter on the following grounds:
 - a. Conviction by a court of competent jurisdiction of an offense related to the honesty, integrity, or trustworthiness of the notary which the secretary of state determines would render the notary or notary applicant unfit to serve the public as a notary.
 - b. Fraud, misrepresentation, or false statement in obtaining or renewing a commission.
 - c. Failure by a commissioned notary to report in writing to the secretary of state the notary's conviction by a court of competent jurisdiction of a felony within ninety days of the date of the conviction.
 - d. Engaging in any act prohibited under section 44-06-13.1.
2. The secretary of state may impose a lesser sanction for a violation of subsection 1 if determined appropriate by the secretary of state under the pertinent facts and circumstances. A lesser sanction includes imposition of a civil penalty not to exceed five hundred dollars or a letter of reprimand.
3. Any person may file a complaint with the secretary of state seeking denial, revocation, or suspension of a commission issued or to be issued by the secretary of state. The secretary of state shall provide a complaint form. The complainant shall use that form and the form must be verified under oath by the complainant or duly authorized officer of the complainant. If the secretary of state determines that a complaint alleges facts that, if true, would require denial, revocation, or suspension of a commission, the secretary of state shall initiate a hearing without undue delay. If the secretary of state determines a complaint does not state facts warranting a hearing, the secretary of state may dismiss the complaint. The secretary of state may initiate a hearing for denial,

revocation, or suspension of a license on the secretary of state's own motion.

4. Any person whose commission has been revoked or suspended may apply to the secretary of state for reinstatement of the commission or termination of the suspension.

Approved April 4, 2007

Filed April 5, 2007

CHAPTER 390

SENATE BILL NO. 2246

(Senators Krebsbach, Heitkamp, Wardner)
(Representatives Boehning, Glassheim, D. Johnson)

LODGING EXPENSE REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to reimbursement of lodging expenses for state and political subdivision officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
 - a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~fifty~~ fifty-five dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved April 11, 2007

Filed April 13, 2007

¹⁹⁷ Section 44-08-04 was also amended by section 2 of Senate Bill No. 2093, chapter 391.

CHAPTER 391

SENATE BILL NO. 2093

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

TRAVEL EXPENSE PAYMENT AND PURCHASING CARDS

AN ACT to amend and reenact section 11-10-16, subsection 2 of section 44-08-04, and sections 44-08-04.4, 44-08-05.1, and 54-44.4-11 of the North Dakota Century Code, relating to payment of travel expenses of state and county officers and employees and purchasing card authority; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-16 of the North Dakota Century Code is amended and reenacted as follows:

11-10-16. Statement to claim mileage. ~~Before~~ Unless the expense was incurred by the use of a purchasing card, before an allowance for mileage or travel expense may be paid by a county, ~~the person~~ individual for whose travel the claim is made shall file with the county auditor an itemized statement verified by affidavit showing the number of miles traveled, the mode of travel, the days of traveling, the purpose of the travel, and the destination. ~~Before~~ a claim for mileage is allowed or paid, the claimant shall file the statement and affidavit with the board of county commissioners which shall decide whether to allow the claim.

¹⁹⁸ **SECTION 2. AMENDMENT.** Subsection 2 of section 44-08-04 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Expenses for For~~ travel within the state ~~must be reimbursed at~~, the following rates for each quarter of any twenty-four-hour period must be used:
 - a. First quarter is from six a.m. to twelve noon and the sum must be five dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be seven dollars and fifty cents.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be twelve dollars and fifty cents.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed fifty dollars plus any

¹⁹⁸ Section 44-08-04 was also amended by section 1 of Senate Bill No. 2246, chapter 390.

additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

SECTION 3. AMENDMENT. Section 44-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04.4. Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel ~~of to meet necessary deadlines or to obtain low rates, may be purchased by the state or any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates must be purchased prepaid by the state.~~ No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

SECTION 4. AMENDMENT. Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Payments - Requirements for approval Purchasing card authority - ~~Penalty - Action for violations.~~

1. Any public officer or employee who has the power to approve a payment ~~for a department, agency, or institution~~ for travel expenses or any other state expenditure of public funds shall determine before approving the payment:
 - 4- a. That the expenditure for travel or other expenditures were for lawful and official purposes.
 - 2- b. If for employee travel reimbursement, ~~that the travel actually occurred and that~~ the sums claimed for travel expenses are actually due the individual who is seeking reimbursement, allowance, or payment.
 - 3- c. If the payment is for expenditure other than travel expense, that the expenditure is lawful and that the payment contains no false claims.

For purchases made with the use of a purchasing card authorized under section ~~54-44.4-11~~, an

2. The director of the office of management and budget, the state board of higher education, the governing body of any political subdivision, and the board of any school district may establish and administer a purchasing card system for use by its officers, employees, representatives, or agents. If the director of the office of management and budget establishes a cooperative purchasing contract under section 54-44.4-13, each participating government entity is responsible for its purchasing card system.
3. An employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all state agencies, may review and approve payments under this section made with a purchasing card and make payments pursuant thereto. The

director of the office of management and budget may designate the state agencies that are required to use the purchasing card system.

4. Any public officer or employee who willfully fraudulently uses a purchasing card or knowingly approves a payment with knowledge it contains for false or unlawful claims or that it which does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under chapter 42-1-23 may be subject to criminal prosecution under title 12.1. Any public officer or employee who, without the use of ordinary care and diligence, negligently uses a purchasing card or approves a payment for a department, agency, or institution containing false or unlawful claims or which does not otherwise meet the requirements of this section for approval is personally liable for any funds improperly expended. The director of the office of management and budget, members of the office of the budget, state auditor Any public officer, employee, or any other person individual who has knowledge of an actual or possible violation of this section shall make such that information known to the attorney general or the appropriate state's attorney. The attorney general or appropriate state's attorney shall investigate any alleged violation and, if a violation appears to exist, shall prosecute under chapter 12-1-23. If there is probable cause to believe that a violation has occurred, the attorney general or appropriate state's attorney shall initiate a criminal prosecution under title 12.1 or bring a civil suit against the public officer or employee for the recovery of such the funds as may actually have been improperly paid against the payee and officer or employee who approved the payment in violation of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any payment negligently has the right of subrogation against the payee of the payment in the event public funds have been improperly paid to the payee, or may initiate a prosecution and a civil suit.

SECTION 5. AMENDMENT. Section 54-44.4-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-11. Small purchases.

1. A procurement not exceeding the amount established by written directive of the director of the office of management and budget ~~under section 54-44.4-02~~ or by the state board of higher education under subsection 5 of section 15-10-17 may be made in accordance with small purchase procedures.
2. A small purchase need not be made through competitive sealed bidding or competitive sealed proposals. However, small purchases must be made with competition that is practicable under the circumstances.
3. Procurement requirements may not be artificially divided as to constitute a small purchase under this section.

4. The director of the office of management and budget may establish and administer, including by contract with a provider, a system of procurement for commodities agencies are authorized to purchase under this section. If the director establishes a purchasing card system under this subsection, the director may designate which agencies are required to use the purchasing card system for purchasing commodities under this section.

Approved May 1, 2007

Filed May 2, 2007

CHAPTER 392

SENATE BILL NO. 2194

(Senators Olafson, G. Lee)
(Representative Charging)

ELECTED OFFICIAL RECALL

AN ACT to amend and reenact section 44-08-21 of the North Dakota Century Code, relating to recalls of elected officials of political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-21 of the North Dakota Century Code is amended and reenacted as follows:

44-08-21. Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the official sought to be recalled was on the ballot, not including other recall elections. An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section 16.1-01-09.1, as they relate to signing and circulating recall petitions, apply to petitions under this section.

A recall petition must include a stated reason for the recall and be approved as to form prior to circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.

Once circulated, the recall petition must be filed with the filing officer with whom a petition for nomination to the office in question is filed unless that filing officer is the person subject to recall, in which case the petition must be filed with the secretary of state. The filing officer with whom the petition is filed shall pass on the sufficiency of a petition pursuant to section 16.1-01-09.1. Except as otherwise provided in this section, the filing officer shall call a special election to be held not sooner than ~~fifty eight~~ days nor later than ~~sixty ninety~~ days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if that date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate filing officer by the ~~thirty third~~ sixtieth day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of

votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose ~~term expires~~ office is on the ballot at a regularly scheduled election occurring within one ~~hundred ninety days after the date the petition is submitted to the secretary of state for approval for circulation~~ year is not subject to recall.

Approved April 9, 2007

Filed April 10, 2007