

CRIMINAL CODE

CHAPTER 173

SENATE BILL NO. 2445
(Senator Christensen)
(Representative Unhjem)

UNIFORM CRIMINAL RESPONSIBILITY AND POST-TRIAL DISPOSITION ACT

AN ACT to adopt the Uniform Law Commissioners' Model Criminal Responsibility and Post-trial Disposition Act, relating to the defense of lack of criminal responsibility; to amend and reenact sections 12.1-04-02 and 12.1-04-06 of the North Dakota Century Code, relating to the use of intoxication as a defense, and psychiatric examinations of defendants for mental disease or defect; and to repeal sections 12.1-04-03 and 12.1-04-10 of the North Dakota Century Code, relating to lack of criminal responsibility as a defense, and the disposition of defendants found not criminally responsible.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Standard for lack of criminal responsibility.

1. An individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs:
 - a. The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and
 - b. It is an essential element of the crime charged that the individual act willfully.
2. For purposes of sections 1 through 26 of this Act, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense. Evidence of the conduct or impairment may be probative in

conjunction with other evidence to establish mental illness or defect.

SECTION 2. Court authorization of state-funded mental-health services for certain defendants. A defendant who is unable to pay for the services of a mental-health professional, and to whom those services are not otherwise available, may apply to the court for assistance. Upon a showing of a likely need for examination on the question of lack of criminal responsibility or lack of requisite state of mind as a result of the defendant's mental condition, the court shall authorize reasonable expenditures from public funds for the defendant's retention of the services of one or more mental-health professionals. Upon request by the defendant, the application and the proceedings on the application must be ex parte and in camera, but any order under this section authorizing expenditures must be made part of the public record.

SECTION 3. Notice of defense of lack of criminal responsibility.

1. If the defendant intends to assert the defense of lack of criminal responsibility, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court. The notice must indicate whether the defendant intends to introduce at trial evidence obtained from examination of the defendant by a mental health professional after the time of the alleged offense.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant additional time to the parties to prepare for trial or may make other appropriate orders.
3. If the defendant fails to give notice in accordance with this section, lack of criminal responsibility may not be asserted as a defense.

SECTION 4. Notice regarding expert testimony on lack of state of mind as element of alleged offense.

1. If the defendant intends to introduce at trial evidence obtained from examination of the defendant by a mental-health professional after the time of the alleged offense to show that the defendant lacked the state of mind required for the alleged offense, the defendant shall notify the prosecuting attorney in writing and file a copy of the notice with the court.
2. The defendant shall file the notice within the time prescribed for pretrial motions or at such earlier or later time as the court directs. For cause shown, the court may allow late filing of the notice and grant

additional time to the parties to prepare for trial or may make other appropriate orders.

SECTION 5. Examination at request of prosecuting attorney.

1. If the defendant has given notice under section 3 or 4 of this Act of intent to introduce evidence obtained from examination of the defendant by a mental-health professional after the time of the alleged offense, the court, upon application by the prosecuting attorney and after opportunity for response by the defendant, shall order that the defendant be examined by one or more mental-health professionals retained by the prosecuting attorney. The court shall include in the order provisions as to the time, place, and conditions of the examination.
2. If the parties agree to examination of the defendant by a mental-health professional retained by the prosecuting attorney without order of the court, sections 6, 7, 8, 10, 11, 12, 13, 14, and 15 of this Act apply to that examination.

SECTION 6. Explanation to defendant. At the beginning of each examination conducted under section 5 of this Act, the mental-health professional shall inform the defendant that the examination is being made at the request of the prosecuting attorney; the purpose of the examination is to obtain information about the defendant's mental condition at the time of the alleged offense; and information obtained from the examination may be used at trial and, if the defendant is found not guilty by reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or other disposition.

SECTION 7. Scope of examination. An examination of the defendant conducted under section 5 of this Act may consist of such interviewing, clinical evaluation, and psychological testing as the mental-health professional considers appropriate, within the limits of nonexperimental, generally accepted medical, psychiatric, or psychological practices.

SECTION 8. Recording of examination.

1. An examination of the defendant conducted under section 5 of this Act must be audio-recorded and, if ordered by the court, video-recorded. The manner of recording may be specified by rule or by court order in individual cases.
2. Within seven days after completion of an examination conducted under section 5 of this Act, the mental-health professional conducting the examination shall deliver a copy of the recording of the examination, under seal, to the court and a copy of the recording to the defendant. The recording may not be disclosed except in accordance with sections 1 through 26 of this Act.

SECTION 9. Consequence of deliberate failure of defendant to cooperate. If the defendant without just cause deliberately fails to participate or to respond to questions in an examination conducted under section 5 of this Act, the prosecuting attorney may apply before trial to the court for appropriate relief. The court may consider the recording of the examination as evidence on the application, but proceedings under this section involving consideration of the recording must be in camera and out of the presence of counsel.

SECTION 10. Reports by mental-health professionals and expert witnesses. A mental-health professional retained by the prosecuting attorney and a mental-health professional whom the defendant intends to call to testify at trial shall prepare a written report concerning any examination of the defendant and other pretrial inquiry by or under the supervision of the mental-health professional. Any other individual whom either party intends to call at trial as an expert witness on any aspect of the defendant's mental condition shall prepare a written report. A report under this section must contain:

1. The specific issues addressed.
2. The identity of individuals interviewed and records or other information used.
3. The procedures, tests, and techniques used.
4. The date and time of examination of the defendant, the explanation concerning the examination given to the defendant, and the identity of each individual present during an examination.
5. The relevant information obtained and findings made.
6. Matters concerning which the mental-health professional was unable to obtain relevant information and the reasons therefor.
7. The conclusions reached and the reasoning on which the conclusions were based.

SECTION 11. Exchange of reports and production of documents. Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant reports prepared pursuant to section 10 of this Act, and the defendant shall furnish to the prosecuting attorney reports by each mental-health professional or other expert on any aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon application by either party and after hearing, the court may require production of documents prepared, completed, or used in the examination or inquiry by the mental-health professional or other expert.

SECTION 12. Use of reports at trial. Use at trial of a report prepared by a mental-health professional or other expert is governed by the North Dakota Rules of Evidence. A report of a mental-health professional or other expert furnished by defendant pursuant to section 10 of this Act may not be used at trial unless the mental-health professional or other expert who prepared the report has been called to testify by the defendant.

SECTION 13. Notice of expert witnesses. Not less than twenty days before trial, each party shall give written notice to the other of the name and qualifications of each mental-health professional or other individual the respective party intends to call as an expert witness at trial on the issue of lack of criminal responsibility or requisite state of mind as an element of the crime charged. For good cause shown, the court may permit later addition to or deletion from the list of individuals designated as expert witnesses.

SECTION 14. Use of evidence obtained from examination.

1. Except as provided in subsection 2 and in sections 9 and 26 of this Act, information obtained as a result of examination of a defendant by a mental-health professional conducted under section 5 of this Act is not admissible over objection of the defendant in any proceeding against the defendant.
2. Subject to the limitation in section 15 of this Act, information obtained from an examination of the defendant by a mental-health professional conducted under section 5 of this Act is admissible at trial to rebut evidence introduced by the defendant obtained from an examination of the defendant by a mental-health professional or to impeach the defendant on the defendant's testimony as to mental condition at the time of the alleged offense.

SECTION 15. Use of recording of examination. Except as provided in section 9 of this Act, recording of an examination of the defendant concerning the defendant's mental condition at the time of the alleged offense may be referred to or otherwise used only on cross-examination for the purpose of impeachment of the mental-health professional who conducted the examination, and then on redirect examination of that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must make the recording available to the prosecuting attorney before any use of it pursuant to this section. If the recording is so used, this section does not preclude its use for the purpose of impeachment of the defendant in any other criminal, civil, or administrative proceeding.

SECTION 16. Bifurcation of issue of lack of criminal responsibility. Upon application of the defendant, the court may order that issues as to the commission of the alleged offense be tried separately from the issue of lack of criminal responsibility.

SECTION 17. Jury instruction on disposition following verdict of lack of criminal responsibility. On request of the defendant in a trial by jury of the issue of lack of criminal responsibility for the alleged offense, the court shall instruct the jury as to the dispositional provisions applicable to the defendant if the jury returns a verdict of not guilty by reason of lack of criminal responsibility.

SECTION 18. Form of verdict or finding. If the issue of lack of criminal responsibility is submitted to the trier of fact:

1. In a unitary trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged. In a bifurcated trial, the trier of fact must first determine whether the prosecuting attorney has proven that the defendant committed the crime charged and, if so, whether the defendant is criminally responsible. Each determination must be made at the conclusion of the phase of the trial at which the respective issue is tried. If the trier of fact concludes that the prosecuting attorney failed to prove that the defendant committed the crime charged, the appropriate verdict or finding is "not guilty".
2. If the trier of fact determines that the defendant committed the crime charged and the defendant was criminally responsible for that crime, the appropriate verdict or finding is "guilty".
3. If the trier of fact determines that the defendant committed the crime charged, but was not criminally responsible for that crime, the appropriate verdict or finding is a statement that the defendant committed the crime charged but that the defendant is "not guilty by reason of lack of criminal responsibility".

SECTION 19. Post-trial motions and appeal from verdict or finding of not guilty by reason of lack of criminal responsibility.

1. A defendant found not guilty by reason of lack of criminal responsibility may seek post-trial relief in the trial court and may appeal to the supreme court on issues pertaining to the verdict or finding that the defendant committed the crime charged.
2. If the verdict or finding is not guilty by reason of lack of criminal responsibility, and a new trial is ordered on the issue of whether the defendant committed the crime charged, unless defendant elects to waive the defense, the verdict or finding of lack of criminal responsibility is conclusive on that issue in the retrial.

SECTION 20. Jurisdiction of court.

1. Unless earlier discharged by order of the court pursuant to section 22, 24, or 25 of this Act, an individual found not guilty by reason of lack of criminal responsibility is subject to the jurisdiction of the court for a period equal to the maximum term of imprisonment that could have been imposed for the most serious crime of which the individual was charged but found not guilty by reason of lack of criminal responsibility.
2. Upon expiration of its jurisdiction under sections 1 through 26 of this Act or earlier discharge by its order, the court may order that a proceeding for involuntary commitment be initiated pursuant to chapter 25-03.1.

SECTION 21. Proceeding following verdict or finding. After entry of a verdict, finding, or an unresisted plea, that an individual committed the crime charged, but is not guilty by reason of lack of criminal responsibility, the court shall:

1. Make a finding, based upon the verdict or finding provided in section 18 of this Act, of the expiration date of the court's jurisdiction; and
2. Order the individual committed to a treatment facility, as defined under chapter 25-03.1, for examination. The order of the court may set terms of custody during the period of examination.

SECTION 22. Initial order of disposition - Commitment to treatment facility - Conditional release - Discharge.

1. The court shall conduct a dispositional hearing within ninety days after an order of commitment pursuant to section 21 of this Act is entered, unless the court, upon application of the prosecuting attorney or the individual committed, for cause shown, extends the time for the hearing. The court shall enter an initial order of disposition within ten days after the hearing is concluded.
2. In a proceeding under this section, unless excused by order of the court, defense counsel at the trial shall represent the individual committed.
3. If the court finds that the individual lacks sufficient financial resources to retain the services of a mental-health professional and that those services are not otherwise available, it shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more mental-health professionals to examine the individual and make other inquiry concerning the individual's mental condition.

4. In a proceeding under this section, the individual committed has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
- a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act, it shall order the person discharged from further constraint under sections 1 through 26 of this Act.
 - b. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is not a proper subject for conditional release, it shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the risk that the individual will commit an act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment if the individual is conditionally released and that necessary supervision and treatment are available, it shall order the person released subject to conditions it considers appropriate for the protection of society.
 - c. If the court finds that the individual is mentally ill or defective and that there is a substantial risk, as a result of mental illness or defect, that the individual will commit a criminal act not included in subdivision b, it shall order the individual to report to a treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

SECTION 23. Terms of commitment - Periodic review of commitment.

1. Unless an order of commitment of an individual to a treatment facility provides for special terms as to custody during commitment, the director or superintendent of the treatment facility may determine from time to time the nature of the constraints necessary within the treatment facility to carry out the court's order. In an order of commitment, the court may authorize the director or superintendent to allow the individual a limited leave of absence from the treatment facility on terms the court may direct.

2. In an order of commitment of an individual to a treatment facility under sections 1 through 26 of this Act, the court shall set a date for review of the status of the individual. The date set must be within one year after the date of the order.
3. At least sixty days before a date for review fixed in a court order, the director or superintendent of the treatment facility shall inquire as to whether the individual is presently represented by counsel and file with the court a written report of the facts ascertained. If the individual is not represented by counsel, the court shall appoint counsel to consult with the individual and, if appropriate, to apply to the court for appointment of counsel to represent the individual in a proceeding for conditional release or discharge.
4. If the court finds in a review that the individual lacks sufficient financial resources to retain the services of a mental-health professional and that those services are otherwise not available, the court shall authorize reasonable expenditures from public funds for the individual's retention of the services of one or more mental-health professionals to examine the individual and make other inquiry concerning the individual's mental condition. In proceedings brought before the next date for review, the court may authorize expenditures from public funds for that purpose.
5. If an application for review of the status of the individual has not been filed by the date for review, the director or superintendent shall file a motion for a new date for review to be set by the court. The date set must be within one year after the previous date for review.

SECTION 24. Modification of order of commitment - Conditional release or discharge - Release plan.

1. After commitment of an individual to a treatment facility under sections 1 through 26 of this Act, the director or superintendent may apply to the court for modification of the terms of an order of commitment or for an order of conditional release or discharge. The application must be accompanied by a report setting forth the facts supporting the application and, if the application is for conditional release, a plan for supervision and treatment of the individual.
2. An individual who has been committed to a treatment facility under sections 1 through 26 of this Act, or another person acting on the individual's behalf, may apply to the court for modification of the terms of a commitment order or for an order of conditional release or discharge. If the application is being considered by the

court at the time of the review of the order of commitment, the court shall require a report from the director or superintendent of the treatment facility.

3. The court shall consider and dispose of an application under this section promptly. In a proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual committed is not mentally ill or defective or that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order the individual discharged from further constraint under sections 1 through 26 of this Act.
 - b. If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it shall vacate the order committing the individual to a treatment facility. If the court finds that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.
 - c. If the court finds that the individual is mentally ill or defective, but that the risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage will be controlled adequately with supervision and treatment and that necessary supervision and treatment are available, it shall order the individual released subject to conditions it considers appropriate for the protection of society.
4. In any proceeding for modification of an order of commitment to a treatment facility, if the individual has been represented by counsel and the application for modification of the order of commitment is denied after a plenary hearing, the court shall set a new date for periodic review of the status of the individual. The date set must be within one year after the date of the order.

SECTION 25. Conditional release - Modification - Revocation - Discharge.

1. In an order for conditional release of an individual, the court shall designate a treatment facility or a person to be responsible for supervision of the individual.
2. As a condition of release, the court may require the individual released to report to any treatment facility for evaluation and treatment, require the individual to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility, and impose other conditions reasonably necessary for protection of society.
3. The person or the director or superintendent of a treatment facility responsible for supervision of an individual released shall furnish reports to the court, at intervals prescribed by the court, concerning the mental condition of the individual. Copies of reports submitted to the court must be furnished to the individual and to the prosecuting attorney.
4. If there is reasonable cause to believe that the individual released presents an imminent threat to cause bodily injury to another, the person or the director or superintendent of the treatment facility responsible for supervision of the individual pursuant to an order of conditional release may take the individual into custody, or request that the individual be taken into custody. An individual taken into custody under this subsection must be accorded an emergency hearing before the court not later than the next court day to determine whether the individual should be retained in custody pending a further order pursuant to subsection 5.
5. Upon application by an individual conditionally released, by the director or superintendent of the treatment facility or person responsible for supervision of an individual pursuant to an order of conditional release, or by the prosecuting attorney, the court shall determine whether to continue, modify, or terminate the order. The court shall consider and dispose of an application promptly. In a proceeding under this section, the applicant has the burden of proof by a preponderance of the evidence. The court shall enter an order in accordance with the following requirements:
 - a. If the court finds that the individual is not mentally ill or defective or that there is not a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act, it shall order that the individual be discharged from further constraint under sections 1 through 26 of this Act.
 - b. If the court finds that the individual is mentally ill or defective, but that there is not a substantial risk

that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage, it may modify the conditions of release as appropriate for the protection of society.

- c. If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual will commit, as a result of mental illness or defect, a criminal act of violence threatening another individual with bodily injury or inflicting property damage and that the individual is no longer a proper subject for conditional release, it shall order the individual committed to a treatment facility for custody and treatment. If the court finds that the individual is mentally ill or defective and that there is a substantial risk that the individual, as a result of mental illness or defect, will commit a nonviolent criminal act, it may order the individual to report to any treatment facility for noncustodial evaluation and treatment and to accept nonexperimental, generally accepted medical, psychiatric, or psychological treatment recommended by the treatment facility.

SECTION 26. Procedures.

1. An applicant for a court order under sections 20 through 25 of this Act shall deliver a copy of the application and any accompanying documents to the individual committed, the prosecuting attorney, the director or superintendent of the treatment facility to which the individual has been committed, or the person or the director or superintendent of a treatment facility responsible for supervision of an individual conditionally released. The North Dakota Rules of Civil Procedure, adapted by the court to the circumstances of a post-verdict proceeding, apply to a proceeding under sections 20 through 25 of this Act.
2. In a proceeding under sections 20 through 25 of this Act for an initial order of disposition, in a proceeding for modification or termination of an order of commitment to a treatment facility initiated by the individual at the time of a review, or in a proceeding in which the status of the individual might be adversely affected, the individual has a right to counsel. If the court finds that the individual lacks sufficient financial resources to retain counsel and that counsel is not otherwise available, it shall appoint counsel to represent the individual.
3. In a proceeding under sections 20 through 25 of this Act, the North Dakota Rules of Evidence do not apply. If

relevant, evidence adduced in the criminal trial of the individual and information obtained by court-ordered examinations of the individual pursuant to section 4 or 22 of this Act are admissible.

4. A final order of the court is appealable to the supreme court.

SECTION 27. AMENDMENT. Section 12.1-04-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-04-02. Intoxication.

1. Intoxication is not a defense to a criminal charge. Intoxication does not, in itself, constitute mental disease or defect within the meaning of section ~~12-1-04-03~~ 12.1-04-04. Evidence of intoxication is admissible whenever it is relevant to negate or to establish an element of the offense charged.
2. A person is reckless with respect to an element of an offense even though his disregard thereof is not conscious, if his not being conscious thereof is due to self-induced intoxication.

SECTION 28. AMENDMENT. Section 12.1-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-04-06. Examination - Temporary commitment. Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect for the purpose of excluding responsibility, or there is reason to doubt his the defendant's fitness to proceed, or reason to believe that mental disease or defect will otherwise become an issue in the case, the court may order the defendant to undergo an examination by a licensed psychiatrist and may order him committed to the state hospital or other suitable facility for a period not to exceed thirty days for such examination. The court may, by subsequent order, may extend the period of commitment for not to exceed thirty additional days. While the defendant is committed, his legal counsel, family, and others necessary to assist in his case shall have reasonable opportunity to examine and confer with him.

SECTION 29. REPEAL. Sections 12.1-04-03 and 12.1-04-10 of the 1983 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 4, 1985

CHAPTER 174

SENATE BILL NO. 2425
(Parker)

MURDER AND MANSLAUGHTER

AN ACT to amend and reenact sections 12.1-16-01 and 12.1-16-02 of the North Dakota Century Code, relating to the penalties for murder and manslaughter.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-16-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-16-01. Murder.

1. A person is guilty of murder, a class AA felony, if he:
 - 1- a. Intentionally or knowingly causes the death of another human being;
 - 2- b. Causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or
 - 3- c. Acting either alone or with one or more other persons, commits or attempts to commit treason, robbery, burglary, kidnapping, felonious restraint, arson, gross sexual imposition, or escape and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of any person; except that in any prosecution under this subsection in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:
 - a- (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the commission thereof; and

- b- (2) Was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and
- e- (3) Reasonably believed that no other participant was armed with such a weapon; and
- d- (4) Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

Subsections 1 and 2 Subdivisions a and b shall be inapplicable in the circumstances covered by subsection 2 of section 12-1-16-02.

2. A person is guilty of murder, a class A felony, if the person causes the death of another human being under circumstances which would be class AA felony murder, except that the person causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse must be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation, or a serious event, or situation for which the offender was not culpably responsible.

SECTION 2. AMENDMENT. Section 12.1-16-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-16-02. Manslaughter. A person is guilty of manslaughter, a class B felony, if he-

- 1- Recklessly recklessly causes the death of another human being; or
- 2- Causes the death of another human being under circumstances which would be murder, except that he causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse. The reasonableness of the excuse shall be determined from the viewpoint of a person in his situation under the circumstances as he believes them to be. An extreme emotional disturbance is excusable, within the meaning of this subsection only, if it is occasioned by substantial provocation; or a serious event; or situation for which the offender was not culpably responsible.

Approved March 29, 1985

CHAPTER 175

SENATE BILL NO. 2102
(Olson)

ASSAULT PENALTY

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to assault; and to amend and reenact sections 12.1-01-04 and 12.1-17-02 of the North Dakota Century Code, relating to general criminal definitions and aggravated assault.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-01-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-01-04. General definitions. As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, a county court, and where relevant, a municipal court.
6. "Dangerous weapon" means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by

- the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
 8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
 9. Repealed by S.L. 1975, ch. 116, § 33.
 10. "Firearm" means any weapon which will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
 11. "Force" means physical action.
 12. "Government" means:
 - a. The government of this state or any political subdivision of this state;
 - b. Any agency, subdivision, or department of the foregoing, including the executive, legislative, and judicial branches;
 - c. Any corporation or other entity established by law to carry on any governmental function; and
 - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
 13. "Governmental function" includes any activity which one or more public servants are legally authorized to undertake on behalf of government.

14. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare he is interested.
15. "Included offense" means an offense:
 - a. Which is established by proof of the same or less than all the facts required to establish commission of the offense charged;
 - b. Which consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
 - c. Which differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
16. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
17. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
18. "Local" means of or pertaining to any political subdivision of the state.
19. Repealed by S.L. 1975, ch. 116, § 33.
20. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
21. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any governmental agency.
22. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
23. "Omission" means a failure to act.
24. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an

offense, the word "person" includes a government which may lawfully own property in this state.

25. "Property" includes both real and personal property.
26. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function, but the term does not include witnesses.
27. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, or permanent ~~or pretracted~~ loss or impairment of the function of any bodily member or organ.
28. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
29. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ, or a bone fracture.
30. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
- ~~30-~~ 31. "Writing" includes printing, typewriting, and copying.
- ~~31-~~ 32. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.

Words used in the singular include the plural, and the plural the singular. Words in the masculine gender include the feminine and neuter genders. Words used in the present tense include the future tense, but exclude the past tense.

SECTION 2. A new section to chapter 12.1-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

Assault. A person is guilty of a class A misdemeanor if that person:

1. Willfully causes substantial bodily injury to another human being; or

2. Negligently causes substantial bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.

SECTION 3. AMENDMENT. Section 12.1-17-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-17-02. **Aggravated assault.** A person is guilty of a class C felony if ~~he~~ that person:

1. Willfully causes serious bodily injury to another human being;
2. Knowingly causes bodily injury or substantial bodily injury to another human being with a dangerous weapon or other weapon, the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury;
3. Causes bodily injury or substantial bodily injury to another human being while attempting to inflict serious bodily injury on any human being; or
4. Fires a firearm or hurls a destructive device at another human being.

Approved March 22, 1985

CHAPTER 176

SENATE BILL NO. 2271
(Olson)

SEXUAL CONTACT DEFINED

AN ACT to amend and reenact subsection 4 of section 12.1-20-02 of the North Dakota Century Code, relating to the definition of sexual contact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12.1-20-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Sexual contact" means any touching of the sexual or other intimate parts of the person for the purpose of arousing or satisfying sexual or aggressive desires.

Approved March 22, 1985

CHAPTER 177

SENATE BILL NO. 2390
(Senators Olson, Kilander, Satrom)
(Representatives Shaw, Rydell, Conmy)

CHILD SEXUAL PERFORMANCES PROHIBITED

AN ACT to create and enact a new chapter to title 12.1 of the North Dakota Century Code, relating to the prohibition of sexual performances by children; and to amend and reenact section 14-10-06 of the North Dakota Century Code, relating to contributing to the deprivation of a minor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a child less than sixteen years of age in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
2. "Performance" means any play, motion picture, photograph, dance, or other visual representation exhibited before an audience, or any part of a performance.
3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.
5. "Sexual performance" means any performance which includes sexual conduct by a child less than sixteen years of age.

6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

Use of a child in a sexual performance. A person is guilty of a class B felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a child less than sixteen years of age to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a child less than sixteen years of age, that person consents to the participation by the child in sexual conduct during a performance.

Promoting or directing an obscene sexual performance by a child. A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a child less than sixteen years of age.

Promoting a sexual performance by a child. A person is guilty of a class C felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a child less than sixteen years of age.

Sexual performance by a child - Affirmative defenses. It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was sixteen years of age or older;
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a similar interest in the material or performance; or
3. The defendant had no financial interest in promoting a sexual performance by a child less than sixteen years of age, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.

Proof of age of child. When it becomes necessary under this chapter to determine whether a child who participated in a sexual performance was under the age of sixteen years, the trier of fact may base its determination on personal inspection of the child,

inspection of a photograph or motion picture of the sexual performance, testimony by a witness to the sexual performance as to the age of the child based upon the child's appearance, expert testimony based upon the appearance of the child in the sexual performance, or any other method authorized by law or by rule.

SECTION 2. AMENDMENT. Section 14-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-06. Unlawful to encourage or contribute to the deprivation or delinquency of minor - Penalty.

1. Any person who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor.
2. Any person who by any act willfully encourages, causes, or contributes to the deprivation of a child less than sixteen years of age by causing that child to engage in sexual conduct as defined under section 1 of this Act, in any play, motion picture, photograph, dance, or other visual representation is guilty of a class C felony.

Approved March 27, 1985

CHAPTER 178

SENATE BILL NO. 2226
(Committee on Judiciary)
(At the request of the State Laboratories Department)

HOTEL FIRE NEGLIGENCE PENALTY

AN ACT to create and enact section 12.1-21-03.1 of the North Dakota Century Code, relating to the provision of a criminal penalty for a negligent act resulting in a fire in any hotel, motel, roominghouse, lodginghouse, or other place of public abode; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Section 12.1-21-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-21-03.1. **Negligent act resulting in fire - Penalty.** It is unlawful for any person to negligently cause a fire to be started in any part of any hotel, motel, roominghouse, lodginghouse, or other place of public abode so as to endanger life or property in any way or to any extent.

1. The state fire marshal shall print and distribute copies of this section to all hotels, motels, roominghouses, lodginghouses, and other places of public abode in this state and such copies shall be conspicuously displayed in each room of every hotel, motel, roominghouse, lodginghouse, and other place of public abode in this state.
2. Violation of this section is a class B misdemeanor.

Approved March 22, 1985

CHAPTER 179

HOUSE BILL NO. 1539
(Gates)

DEFRAUDING SECURED CREDITORS

AN ACT to amend and reenact section 12.1-23-08 of the North Dakota Century Code, relating to defrauding secured creditors and theft of secured property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-23-08. Defrauding secured creditors.

1. A person is guilty of an offense if he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to prevent collection of the debt represented by the security interest or if he makes false statements at the time of sale as to the existence of security interests or as to the ownership or location of such property in the certificate provided for under section 41-09-28. An owner of property who creates a security interest in such property may not intentionally alter, conceal, destroy, damage, encumber, transfer, remove, or otherwise deal with property that is subject to the security interest without the prior consent of the secured party if that action has the effect of hindering the enforcement of the security interest.
2. The offense A person may not destroy, remove, damage, conceal, encumber, transfer, or otherwise deal with property that is subject to a security interest with the intent to prevent collection of the debt represented by the security interest.
3. A person may not, at the time of sale of property that is subject to a security interest, or is described in a certificate provided for under section 41-09-28, make

false statements as to the existence of security interests in the property, or as to the ownership or location of the property.

4. A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value exceeding of more than five hundred dollars, and a class A misdemeanor in as determined under subsection 6 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor. Value is to be determined as provided in subsection 6 of section 12-1-23-05.

Approved March 29, 1985

CHAPTER 180

HOUSE BILL NO. 1334
(Unhjem)

CABLE TELEVISION THEFT

AN ACT to provide criminal and civil penalties for theft of cable television and an exemption for amateur radio communications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Theft of cable television services - Penalty. A person is guilty of a class B misdemeanor if the person:

1. Knowingly obtains or attempts to obtain cable television service from another by any means, artifice, trick, deception, or device without the payment to the cable television operator of all lawful compensation for each type of service obtained;
2. Knowingly assists or instructs any other person in obtaining or attempting to obtain any cable television service without the payment to the cable television operator of all lawful compensation for each type of service obtained or attempted to be obtained;
3. Knowingly tampers, diverts from, or connects to by any means, whether mechanical, electrical, acoustical or other means, any cables, wires, or other devices used for the distribution of cable television without authority from the cable television operator; or
4. Knowingly manufactures, imports into this state, distributes, sells, offers for sale or rental, possesses for sale, or advertises for sale, any device, plan or kit for a device, or printed circuit, designed to unlock, decode, descramble, or otherwise make intelligible any locked, encoded, scrambled, or other nonstandard signal carried by the cable television system, thereby facilitating the doing of any acts specified in subsections 1, 2, and 3.

SECTION 2. Civil penalties for theft of cable television services.

1. Any person who violates subsection 1, 2, or 3 of section 1 of this Act is liable to the franchised or otherwise duly licensed cable television system for the greater of one thousand dollars or three times the amount of actual damages, if any, sustained by the system, plus reasonable attorney fees.
2. Any person who violates subsection 4 of section 1 of this Act is liable to the franchised or otherwise duly licensed cable television system for the greater of ten thousand dollars or three times the amount of actual damages, if any, sustained by the plaintiff, plus reasonable attorney fees. A second or subsequent conviction is punishable by the greater of twenty thousand dollars or three times the amount of actual damages, if any, plus reasonable attorney fees.

SECTION 3. Theft of cable television services - Action - Injunction - Property forfeiture.

1. Any franchised or otherwise duly licensed cable television system may bring an action to enjoin and restrain violation of section 1 of this Act or an action for conversion, or both, and may in the same action seek damages as provided for in section 2 of this Act.
2. Any communications paraphernalia prohibited under section 1 of this Act may be seized and, upon conviction, is forfeited to the jurisdiction where the arrest was made. The paraphernalia may be, pursuant to court order, sold or destroyed.
3. It is not a necessary prerequisite to an action pursuant to section 2 of this Act that the plaintiff has suffered, or is threatened with, actual damages.

SECTION 4. Amateur radio communications - Exemption. This Act shall not be construed to prevent the manufacture, importation, distribution, sale, offer for sale or rental, possession for sale, or advertisement for sale, any device, plan or kit for a device, or printed circuit, used by federally-licensed amateur radio (ham) operators for amateur radio communications as permitted under 47 C. F. R. 91.7 et seq.

Approved March 29, 1985

CHAPTER 181

SENATE BILL NO. 2480
(Christensen)

OBSCENITY

AN ACT to amend and reenact section 12.1-27.1-01 of the North Dakota Century Code, relating to obscenity, definitions, and classification of offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-27.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-01. Obscenity - Definitions - Dissemination - Classification of offenses.

1. A person is guilty of a class A ~~misdemeanor~~ C felony if, knowing of its character, he the person disseminates obscene material, or if he the person produces, transports, or sends obscene material with intent that it be disseminated.
2. A person is guilty of a class A ~~misdemeanor~~ C felony if he the person presents or directs an obscene performance for pecuniary gain, or participates in any portion of a performance which contributes to the obscenity of the performance as a whole.
3. A person is guilty of a class A ~~misdemeanor~~ C felony if he the person, as owner or manager of an establishment licensed under section 5-02-01, permits an obscene performance in ~~his~~ the establishment. A person is guilty of a class A ~~misdemeanor~~ C felony if he that person participates, whether or not for compensation, in an obscene performance in an establishment licensed under section 5-02-01.
4. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:

- a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
- b. Depicts or describes in a patently offensive manner sexual conduct as described in subsection 8 of this section, whether normal or perverted; and
- c. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

~~That~~ Whether material or a performance is obscene ~~shall~~ must be judged with reference to ordinary adults, unless it appears from the character of the material or from the circumstances of its dissemination ~~to be~~ that the material or performance is designed for minors or other specially susceptible audience, in which case, the material or performance ~~shall~~ must be judged with reference to that type of audience.

5. As used in this chapter, the term "disseminate" means to sell, lease, advertise, broadcast, exhibit, or distribute for pecuniary gain.
6. As used in this chapter, the term "material" means any physical object, including, but not limited to, any type of book, sound recording, film, or picture used as a means of presenting or communicating information, knowledge, sensation, image, or emotion to or through a human being's receptive senses.
7. As used in this chapter, the term "patently offensive" means so offensive on its face as to affront the contemporary North Dakota standards of decency.
8. As used in this chapter, the term "performance" means any play, dance, or other exhibition presented before an audience.
9. As used in this chapter, the term "prurient interest" means a shameful or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.
- 8- 10. As used in this chapter, the term "sexual conduct" means actual or simulated:
 - a. Sexual intercourse_{7i};
 - b. Sodomy_{7i};
 - c. Sexual bestiality_{7i};

- d. Masturbation_{7i};
- e. Sadomasochistic abuse_{7i};
- f. Excretion₇ ~~or a lewd~~; or
- g. Lewd exhibition of the male or female genitals.

As used in this subsection, the term "sodomy" means contact between the penis and the anus, the mouth and the penis, the mouth and the vulva, or the mouth and the anus. As used in this subsection, the term "sadomasochistic abuse" means a depiction or description of flagellation or torture by or upon a person who is nude or clad in undergarments or in a bizarre or revealing costume; or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

- 9- 11. As used in this chapter, the term "book" means any book, magazine, pamphlet, newspaper, or other article made out of paper and containing printed, typewritten, or handwritten words.

Approved March 28, 1985

CHAPTER 182

HOUSE BILL NO. 1615
(Shaw)

INDECENT MATERIAL DISTRIBUTION

AN ACT to amend and reenact subsection 5 of section 12.1-27.1-01 of the North Dakota Century Code, relating to dissemination of obscene material.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 12.1-27.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. As used in this chapter, ~~the term~~ "disseminate" means to sell, lease, rent, advertise, broadcast, transmit, exhibit, or distribute for pecuniary gain. "Disseminate" includes any transmission of visual material shown on a cable television system, whether or not accompanied by a sound track, and any sound recording played on a cable television system.

Approved March 31, 1985

CHAPTER 183

SENATE BILL NO. 2411
 (Senators Reiten, Krauter, Wright)
 (Representatives A. Olson, Whalen, Starke)

SUNDAY CLOSING

AN ACT to create and enact a new section to chapter 12.1-30 of the North Dakota Century Code, relating to a severability clause for the chapter; to amend and reenact sections 12.1-30-01, 12.1-30-02, and 12.1-30-03 of the North Dakota Century Code, relating to businesses and occupations permitted to operate on Sunday; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-30-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-30-01. Business or labor on Sunday - Exemptions - Classification of offenses.

1. Except as otherwise provided in sections 12.1-30-02 and 12.1-30-03, it ~~shall be~~ is a class B misdemeanor for any person on Sunday to ~~engage do any of the following activities:~~
 - a. Engage in or conduct business or labor for profit in the usual manner and location, ~~or to operate.~~
 - b. Operate a place of business open to the public, ~~or to authorize.~~
 - c. Authorize or direct ~~his~~ that person's employees or agents to take ~~such~~ action prohibited under this section. ~~This~~
2. The prohibition in subsection shall 1 does not apply to any a person who in good faith observes a day other than Sunday as the Sabbath, if he that person refrains from engaging in or conducting business or labor for profit and closes his the place of business to the public on that the day observed as the Sabbath.

- 2- 3. The attorney general, a state's attorney, a mayor, a city manager, or a city attorney may petition a district court, for the district where a violation is occurring, to enjoin a violation of this section.

SECTION 2. AMENDMENT. Section 12.1-30-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-30-02. Personal property sales allowable Items prohibited from sale or rental on Sunday. The Except for items sold at hobby shows, craft shows, fairs, exhibits, occasional rummage sales including garage sales or other sales for which a sales tax permit is not required, and tourist attractions that derive at least fifty percent of their annual gross sales from seasonal or tourist customers, the sale or rental of any of the following items of personal property shall be allowed during any and all hours on Sundays Sunday is prohibited:

1. Drugs, medical and surgical supplies, or any object purchased on the written prescription of a licensed medical or dental practitioner for the treatment of a patient.
2. Food prepared for consumption on or off the premises where sold.
3. Newspapers, magazines, and books.
4. Gasoline, fuel additives, lubricants, and antifreeze.
5. Tires.
6. Repair or replacement parts and equipment necessary to, and safety devices intended for, safe and efficient operation of land vehicles, boats, and aircraft.
7. Emergency plumbing, heating, cooling, and electrical repair and replacement parts and equipment.
8. Cooking, heating, and lighting fuel.
9. Infant supplies.
10. Camera and school supplies, stationery, and cosmetics.
11. Beer and alcoholic beverages until one a.m., except as provided by section 5-02-05-1. Clothing other than work gloves and infant supplies.
2. Clothing accessories.
3. Wearing apparel other than that sold to a transient traveler under emergency conditions.

4. Footwear.
5. Headwear.
6. Home, business, office, or outdoor furniture.
7. Kitchenware.
8. Kitchen utensils.
9. China.
10. Home appliances.
11. Stoves.
12. Refrigerators.
13. Air conditioners.
14. Electric fans.
15. Radios.
16. Television sets.
17. Washing machines.
18. Dryers.
19. Cameras.
20. Hardware other than emergency plumbing, heating, cooling, or electrical repair or replacement parts and equipment.
21. Tools other than manually driven hand tools.
22. Jewelry.
23. Precious or semiprecious stones.
24. Silverware.
25. Watches.
26. Clocks.
27. Luggage.
28. Motor vehicles other than the daily rental of vehicles by businesses whose sole activity is automobile rental.
29. Musical instruments.

30. The sale of aural or video recordings, records, or tapes. Rental of these items is permitted.
31. Toys other than those customarily sold as novelties or souvenirs.
32. Mattresses.
33. Bed coverings.
34. Household linens.
35. Floor coverings.
36. Lamps.
37. Draperies.
38. Blinds.
39. Curtains.
40. Mirrors.
41. Cloth piece goods.
42. Lawnmowers.
43. Sporting or recreational goods other than those sold or rented on the premises where sports or recreational activities are conducted.
44. Paint and building and lumber supplies.

SECTION 3. AMENDMENT. Section 12.1-30-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-30-03. Businesses allowed to operate on Sunday - Limitations. The operation of any of the following businesses shall be allowed on Sundays Subject to the limitations of this section and section 12.1-30-02, a business specified in this section may operate in the business' usual manner, location, and for its usual purposes. The businesses authorized under this section to operate on Sunday include:

1. Restaurants, cafeterias, or other prepared food service organizations.
2. Hotels, motels, and other lodging facilities.
3. Hospitals and nursing homes, including the sale of giftware on the premises.

4. Dispensaries of drugs and medicines.
5. Ambulance and burial services.
6. Generation and distribution of electric power, water, steam, natural gas, oil, or other fuel used as a necessary utility.
7. Distribution of gas, oil, and other fuels.
8. Telephone, telegraph, and messenger services.
9. Heating, refrigeration, and cooling services.
10. Railroad, bus, trolley, subway, taxi, and limousine services.
11. Water, air, and land transportation services and attendant facilities.
12. Cold storage warehouse.
13. Ice manufacturing and distribution facilities and services.
14. Minimal maintenance of equipment and machinery.
15. Plant and industrial protection services.
16. Industries where continuous processing or manufacturing is required by the very nature of the process involved.
17. Newspaper publication and distribution.
18. Newsstands.
19. Radio and television broadcasting.
- ~~19-~~ 20. Motion picture, theatrical, and musical performances.
- ~~20-~~ 21. Motor vehicle service stations that sell motor fuel and motor oil, and that customarily provide daily repair services or products for any of the following systems or parts of a motor vehicle:
 - a. Air conditioning system.
 - b. Batteries.
 - c. Electrical system.
 - d. Engine cooling system.
 - e. Exhaust system.

- f. Fuel system.
 - g. Tires and tubes.
 - h. Emergency work necessary for the safe and lawful operation of the motor vehicle.
- ~~21-~~ 22. Athletic and sporting events.
- ~~22-~~ 23. Parks, beaches, and recreational facilities.
- ~~23-~~ 24. Scenic, historic, and tourist attractions.
- ~~24-~~ 25. Amusement centers, fairs, zoos, and museums.
- ~~25-~~ 26. Libraries.
- ~~26-~~ 27. Educational lectures, forums, and exhibits.
- ~~27-~~ 28. Service organizations (USO, YMCA, etc.).
- ~~28-~~ 29. Coin-operated laundry and drycleaning facilities.
30. Greengery Food stores operated by the owner-manager who regularly employs an owner or manager in addition to not more than three six employees for the operation of said store working in the store at one time on a Sunday.
31. Bait shops for the sale of live bait and fishing tackle.
32. From April first through June fifteenth, floral nurseries for the sale of bedding plants and nursery stock.
33. From November twentieth through December twenty-fourth, Christmas tree stands.
34. Hobby shows, craft shows, fairs, exhibits.
35. Occasional rummage sales, including garage sales or other sales for which a sales tax permit is not required.
36. Community festivals licensed or authorized by the governing body of a city or the board of county commissioners.
- ~~29-~~ 37. Premises licensed to dispense beer and alcoholic beverages within the limits prescribed in sections 5-02-05 and 5-02-05.1.

SECTION 4. A new section to chapter 12.1-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Severability of provisions. If any section, sentence, clause, phrase, or word of this chapter is for any reason held or declared to be unconstitutional, inoperative, or void, that holding or declaration does not affect the remaining portion of this chapter, and the rest of this chapter, after the exclusion of that section, sentence, clause, phrase, or word, is deemed and must be held to be valid as if that section, sentence, clause, phrase, or word had not been included in the chapter.

SECTION 5. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985